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HISTORY AND LAW
OF
FISHERIES.

BY

STUART A. MOORE, F.S.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW ;

Author of "The History and Law of the Foreshore."

AND

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*Author of "The Rules of the Road at Sea," and Joint-Editor of
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To
THE HONOURABLE
MR. JUSTICE WILLS
THIS WORK IS BY PERMISSION
RESPECTFULLY DEDICATED.

A.D. 1495.

“Quant le soil est al defendant donques de common droit il doit aver tiels profits queux surdant sur la terre, et tous les profits et revenues comme est al premier entendement, et auxi quant le plaintiff monstre que est pischarie, donque nest auter profit forsque pischary a prendre la, quel de comme droit convient apperteyner a luy *sicomme grasse des autres terres*.”—Year Book, Trin. 10 Henry VII., pl. 1, A.D. 1495.

A.D. 1877.

It appears then to me to be beyond dispute that the exclusive right of fishing in tidal waters vested in the hands of the Crown is no more than an incident of the soil over which the waters flowed, as affected by the exercise of the King's franchise of excluding the public; and that that right can, and generally does, exist in the subject as an incident of the soil, and not as an incorporeal hereditament.—Judgment of PALLES, C.B., *Duke of Devonshire v. Neill*, 2 L. R. Ir. 173, A.D. 1877.

PREFACE.

IN this work the Authors have endeavoured to collect all available information relating to the law of fishery, applicable to fisheries in England, Wales, and (as regards the common law) Ireland. The common law of Scotland has not been dealt with; that must be left to learned gentlemen of the Scotch Bar. The subject has been exhaustively and admirably dealt with by Mr. Tait in his "Law of Scotland Applied to the Laws of Trout and Salmon Fishing." The statutory law relating to Ireland has not been dealt with. It will be found in Mr. Conner's book on "Fishing Laws."

The first part of the work relates to the history and law of fisheries at common law. The second part reviews historically the ancient legislation with regard to fisheries, and deals generally with modern statutory provisions now in force and the powers of owners of fisheries, boards of conservators, the powers and jurisdiction of magistrates, and the restrictions upon and regulation of fisheries, both as to salmon and migratory fish, sea fish, and freshwater fish other than salmon. In the Appendices will be found the statutes relating to fisheries in England, so far as they remain unrepealed, with notes of decided cases relating to them.

The special provisions of local Acts have not been set out as these Acts are numerous and local practitioners will be well acquainted with their provisions. A list of them, which it is hoped is complete, will be found in the Table of Statutes arranged chronologically. There is also given a list of places where fisheries existed and are referred to in the Domesday Book; and a list of fisheries in various places in the Kingdom, reference to which in ancient records has been found by the Authors in collecting materials for this work.

The object of the Authors has been to collect everything relating to fisheries that may be useful to practitioners and owners of fisheries and the public, so as to make the work a complete conspectus of the law as regards both inland and sea fisheries in every respect, and it is hoped that this endeavour has not been unsuccessful.

The extensive examination of ancient records and authorities which has been made in the preparation of this work shows that

misconceptions and errors as to facts relating to fisheries have from time to time arisen. To these we wish to call attention, because we think that the pointing out of these errors may have considerable effect upon the construction which may hereafter be placed upon the documents of title and the evidence which may be put forth in support of titles to fisheries. The undue weight attributed to the ingeniously constructed dicta of ancient text writers, endeavouring, in their ignorance very often of true facts, to lay down the law in general propositions, has led to the enunciation of principles very often inconsistent with the true facts as to the existence, nature and attributes of fisheries. The theory as to the manner in which fisheries in tidal water were established, and public right to fish in them excluded, and the prevention of the further putting tidal waters in defence by the sixteenth chapter of *Magna Charta*, is shown in Chapter II. to be extremely doubtful; and we appear to be ignorant altogether of the process by which several fisheries in tidal water were established. We venture to submit that the truth probably is that the exclusive ownership of fisheries in tidal water arose simply from the possession by the subject of the soil of the tidal water which imported the natural result, viz., the right to take the profits of that soil; and that the exclusion of any public right of fishing, if such existed in ancient times otherwise than by tacit licence of the Crown before the soil of the water was granted out, was effected by the grantee of the soil excluding such public fishing in the same manner that the grantee of waste land on coming into possession of the soil would exclude the people of the country from pasturing their cattle there, although they may have previously been allowed to do so by the tacit licence of the Crown during the period that such land was in the Crown's possession. We think that there is no evidence in existence to show that the exclusion of the public right of fishing was effected by any exercise of any prerogative right other than the right of the Crown to grant the soil of the tidal water to a subject.

The erroneous dictum of Lord Coke, that by the grant of a fishery with livery of seisin the soil does not pass, which has been repeated again and again by text writers, and by judges, has doubtless led to the general idea which has prevailed amongst lawyers for centuries that an exclusive fishery must always, or almost always, be an incorporeal hereditament, which certainly is not the case, is dealt with in Chapter III. Blackstone's ingenious but unsound suggestion, that a "free fishery" is an incorporeal fishery in tidal water in the nature of a franchise to be exercised over the soil of the Crown, has doubtless greatly helped to uphold the notion that fisheries in the sea are of necessity incorporeal; whereas it appears from the

facts that his suggestion is untrue (see Chapter III.). Again, the confusion arising from the many attempted definitions of and distinctions between "several" fisheries and "free" fisheries" (see Chapters VI. and VII.), has further helped to confirm the impression that fisheries are incorporeal and not, as they almost always are, corporeal hereditaments; and the view taken by Cockburn, C.J., in the case of *Marshall v. Ulleswater Company*, as to the effect of the grant of a fishery carrying the soil, has, by force of the respect rightly due to that most learned judge, tended to support the erroneous dictum of Lord Coke, and to further increase the commonly accepted idea as to the incorporeality of fisheries (see Chapters VIII. and IX.). This generally prevalent idea that fisheries were *primâ facie* incorporeal hereditaments has resulted in affecting the minds of conveyancers, who, in consequence, have, in drawing grants, deeds, and conveyances, made use of expressions and terms which produce the impression that fisheries conveyed by deeds and settlements were incorporeal and not, as in most cases they were, corporeal hereditaments: as, for example, ancient fisheries parcel of and never severed from a manor (see Chapters VIII. and IX.). The error of Manwood with regard to the right of the King to the fishery in rivers which are the bounds of a forest, or rather, the misstatement of the case on which he founds his dictum, has led to another erroneous notion, and is an example of the danger of looking upon the dicta of ancient text writers as correct and binding statements of law without careful examination of the facts and documents upon which those dicta have been founded (see Chapter XX.).

The doubts which exist as to the shoreward limit of the right of public fishing in tidal water, the questions as to the true mode of ascertaining the boundaries of half-stream fisheries in tidal and non-tidal rivers, and the effect of the change of the course of rivers on the ownership of the fisheries in them, are dealt with in Chapters XIX., XX., and XXI. In each of these questions the authorities appear to be conflicting and uncertain.

Under a system of jurisprudence which is bound and fettered by respect for precedent and ready to bow down to the dicta of ancient text writers, we feel it almost sacrilegious to suggest that, when we find that those dicta are confused and conflicting, it is time that they should be carefully examined and their accuracy tested by the light of the ancient records upon which they are supposed to have been founded; and, when it is found that the evidence of the ancient records does not support the dicta, that they should cease to be regarded as of great authority simply because they may have been followed in case after case from Jacobean times downwards.

With the exception of Lord Hale, whose knowledge of ancient records was to the last degree profound, few, if any, of the ancient text writers had any extensive knowledge of the records of the Courts, and their dicta have too often been arrived at on an imperfect knowledge of general facts. Lord Hale, on the contrary, deduces all his dicta from perusal of ancient records, which he cites, or from personal knowledge of the facts of the cases, on which he founds his statements of the law, and we are not aware that any such statement by him has been found to be erroneous or has been overruled. Until recent times it was doubted that the treatises “De Jure Maris” and “De Portibus Maris” were written by him, but it has now been shown that he was the author of them (*b*). If, therefore, the dicta above referred to be treated as of a doubtful authority, surely it will be safer to trust (as did Lord Hale) to the inferences to be drawn from ancient records, showing the history of and the modes of dealing with fisheries in ancient times, when endeavouring, in a case of dispute as to a fishery, to regard its history from the most probable point of view. We should start with the *prima facie* presumption that it is a fishery with the soil, that has passed from hand to hand through centuries by conveyance of it and of the land upon which it lies, and that its owners have enjoyed the fishery as part of the profits of the land, and then if the particular evidence relating to it is consistent with that state of facts we should conclude that it is a corporeal and not an incorporeal hereditament. If, however, it should turn out upon the evidence that there has been no user of the soil by the owner to justify this presumption, and there has been user of the soil adverse to the owner of the fishery, then we shall arrive at the conclusion that by some means in ancient times the right of fishery, which must originally have been a profit of the soil, has been severed from the soil, and the fishery will be deemed an incorporeal hereditament. The grants and conveyances of fisheries, having regard to the erroneous dicta of text writers and the general impression of lawyers in past times, ought not to be construed strictly according to the precise language used in them by conveyancers; but should be treated on the modern principles laid down by Lord Wensleydale that ancient documents are to be construed by the user which has taken place under them. The language of grants and conveyances, owing to the erroneous notions prevailing at the time they were drawn up, cannot be trusted as accurate representations of the facts. If this be done many of the difficulties which arise in cases relating to fisheries will wholly disappear.

(*b*) Stuart Moore on Foreshore, p. 318.

It is interesting to notice in these modern days when the legislature has found it advisable to entrust the management and control of fisheries to Local Authorities and Fishery Boards that in the time of King Edward the First (7 Edward I. A.D. 1279) the fisheries in the county of Cumberland were regulated by the county under the supervision of the King's justices in Eyre, who made statutes and ordinances, with the consent and approval of the men of the county, for a close time, free gaps, and the regulation of nets and fishing engines in the waters of the county. (See p. 172 (n.)). It seems possible that the making of these ordinances in the county of Cumberland may have called the attention of the legislature to the advisability of passing a statute to create a close season to regulate the meshes of nets and to regulate the use of weirs with a view of preserving the valuable food supply afforded by salmon. It may well have been the germ of the Statute of Westminster the 2nd (13 Edward I. A.D. 1285). The constant issuing of commissions of conservancy to enforce the provisions of this statute and the passing of subsequent statutes shows the anxiety of the government ever afterwards to protect and improve salmon fisheries as a food supply.

In Chapter I. of Part II., *post*, p. 171, the various statutes from 1285 to 1818 are described. They show the continual anxiety of the legislature to preserve fish and especially salmon and migratory fish. The Salmon Act of 1818, which remained in force till 1861, although it continued former legislation as to close seasons, and protected fish from illegal capture and, to some extent, from the effects of pollution, and, although it ordered the appointment of conservators by the justices, proved insufficient to prevent the slow extinction of salmon by the obstruction of weirs and fixed engines, and the use of destructive nets. By Section V. it was provided that "nothing herein contained shall extend or be deemed or construed to legalise, nor to demolish, take away or destroy any net, fish lock, coop, bay, or other work, which shall have been or may hereafter be lawfully erected, put, placed, fixed, or used in any such arm of the sea, or estuary, or mouth of any river, or in or upon any bank, sand or shore thereof, or near thereto, or in or near any river, rivulet, brook, stream, pond, pool, or other water, mill lead, mill dam, sluice or cut, which runs into or otherwise communicates therewith, or to the present modes or methods used for taking and killing fish therein, other than and as are in this Act particularly prohibited"; and by Section XV. it was enacted that "nothing herein contained shall extend to affect the rights of any lord or lords, lady or ladies of any manor; and it shall be lawful for such lord or lords, lady or ladies, and they are hereby required to appoint conservators for the protection

of any river or rivers within their respective manors''; and by Section XVI. the rights of bodies politic and corporate and collegiate are fully secured. These saving clauses had the effect of leaving untouched all the mischief occasioned by the owners of fisheries by weirs, fixed engines and destructive nets. It is true that the lords of manors, who were perhaps the greatest offenders, were ordered to appoint conservators for the protection of the rivers within their manors; but the obstruction and destruction of the fish was left as it was and the Act had only the effect of providing a close season, and preventing the capture of fish by drugs or foul water and by the use of fire and light. In short, it seems to have done little more than to have prevented poaching, leaving the owners of fisheries free to fish as they had hitherto done. So the matter rested till 1861 when, mainly through the exertions of the late Mr. Frank Buckland and a number of other eminent authorities on the culture and preservation of fish, an Act was passed by which it was doubtless intended that the powers of the owners of fisheries to keep up weirs and use destructive methods of fishing should be greatly limited. The provisions of this Act and subsequent Acts down to 1886 are fully set out in the Appendix. Most careful provisions are enacted for the purpose of giving the salmon a free run up and down the rivers, for protecting them by close seasons and from pollution, and from illegal capture. The fishing weirs were ordered to be regulated and free gaps made in them which were to be kept open for the passage of fish at all times, and fish passes were authorised to be attached to dams. Again, however, in the care of the legislature not to interfere too seriously with vested rights, exceptions were inserted for saving the rights of owners of ancient weirs and modes of fishing which gave rise to much litigation, and although many weirs and fixed engines were swept away, a number of ancient obstructions were still left notwithstanding the exertions of the Fishery Commissioners who were appointed to inquire into the legality of all fixed engines.

What effect all this legislation for the protection of salmon had upon the supply, as compared with that of ancient times, we can form no useful estimate. The ancient accounts of the receipts of fisheries are generally reckoned in money, and no information given as to the quantity or number of the fish taken. The accounts of one fishery, however, viz., that of the Itchen, which belonged to the Bishops of Winchester, show the number of salmon annually taken in the reigns of Henry III., Edward I., and Edward II., and give some information as to the prices of the fish. The takes of salmon in the various years were as follows:—1244, 74 salmon sold for

£7 9s. 8d., or an average of about 2s. 9d. apiece; 1246, 46 salmon of which 7 fetched 10s. 9d., and 39 sold for £5 10s. 11d.; 1251, 7 salmon sold for 33s. (weir out of repair); 1252, 17 salmon; 1266, 24 salmon; 1269, 15 salmon; 1272, 44 salmon; 1275, 15 salmon; 1279, 8 salmon (weir out of repair); 1281, 76 salmon (a new weir); 1283, 26 salmon; 1284, 25 salmon; 1285, 60 salmon; 1286, 37 salmon; 1287, 85 salmon; 1288, 40 salmon; 1293, 44 salmon, of which 10 sold at 6s. apiece, and 34 at 2s. apiece; 1295, 13 salmon; 1296, 36 salmon; 1298, 35 salmon; 1299, 54 salmon sold for £6 12s.; 1300, 18 salmon sold for £3 6s.; 1305, a salmon was sent to the King alive when he was staying at the Priory of S. Denys; 1306, 72 salmon; 1308, 21 salmon of which 8 sold for 41s. 6d., and 10 for 35s.; 1309, 99 salmon; 1312, 55 salmon, 18 of which fetched 35s. 6d.; 1313, 55 salmon, 53 of which fetched £8 0s. 3d., viz., 19 at 4s. and 34 at 2s.; 1367, 42 salmon sold for £6 12s., viz., 12 at 3s. 4d., 20 at 3s., and 15 at 2s. 6d.; 1401, 12 salmon sold at 6s. 8d. each, 3 at 3s. 4d. each, and 100 lampreys at 1s. 8d. a hundred.

This fishery which was fished by a "hiltra" or trap at South Stoneham, is now the property of Sir Samuel Montagu.

The only other record we have found of the takes of salmon river is that of the diary of one Lovegrove, who was tenant of the Boulter's Lock fishery on the Thames at Maidenhead from 1794 to 1821, referred to by Mr. Grenfell in a letter to the *Times* in 1899, the summary of which is as follows:—

| Year. | | | No. of Fish. | | | Weight in pounds. |
|-------|-----|-----|--------------|-----|-----|-------------------|
| 1794 | ... | ... | 15 | ... | ... | 148 |
| 1795 | ... | ... | 19 | ... | ... | 168 |
| 1796 | ... | ... | 18 | ... | ... | 328 |
| 1797 | .. | ... | 37 | ... | ... | 670 |
| 1798 | ... | ... | 16 | ... | ... | 317 |
| 1799 | ... | ... | 36 | ... | ... | 507 |
| 1800 | ... | ... | 29 | ... | ... | 388 |
| 1801 | ... | ... | 66 | ... | ... | 1,124 |
| 1802 | ... | ... | 18 | ... | ... | 297 |
| 1803 | ... | ... | 20 | ... | ... | 374 |
| 1804 | ... | ... | 62 | ... | ... | 943 |
| 1805 | ... | ... | 7 | ... | ... | 116 |
| 1806 | ... | ... | 12 | ... | ... | 245 |
| 1807 | ... | ... | 16 | ... | ... | 258 |
| 1808 | ... | ... | 5 | ... | ... | 88 |
| 1809 | ... | ... | 8 | ... | ... | 116 |
| 1810 | ... | ... | 4 | ... | ... | 70 |
| 1811 | ... | ... | 16 | ... | ... | 181 $\frac{3}{4}$ |

| Year. | No. of Fish. | | | Weight in Pounds. | | |
|-------|-----------------|-----|-----|-------------------|-----|---------------------|
| 1812 | ... | ... | 18 | ... | ... | 224 |
| 1813 | ... | ... | 14 | ... | ... | 220 |
| 1814 | ... | ... | 13 | ... | ... | 97 $\frac{1}{2}$ |
| 1815 | ... | ... | 4 | ... | ... | 52 |
| 1816 | ... | ... | 14 | ... | ... | 179 |
| 1817 | ... | ... | 5 | ... | ... | 76 $\frac{1}{2}$ |
| 1818 | ... | ... | 4 | ... | ... | 48 $\frac{1}{2}$ |
| 1819 | ... | ... | 5 | ... | ... | 84 |
| 1820 | not one caught. | | | | | |
| 1821 | ... | ... | 2 | ... | ... | 31 |
| Total | | | 483 | ... | ... | 7,346 $\frac{1}{4}$ |

Thames salmon appear by the diary to have fetched high prices, two salmon of 21 lbs. and 18 lbs. caught on the 11th May, 1795, fetching £9 15s. and one caught in 1808 selling for £7 4s., at the rate of 8s. a lb. The extinction of salmon in the Thames was not, as is usually supposed, primarily due to the pollution of the lower river by sewage. There was no serious pollution at the period when Lovegrove kept his diary. Ships took in their fresh water in the Pool long after that date and within living memory, and the serious pollution did not begin much before 1850—1860. The real factor that kept salmon out of the Thames was the erection of the pound locks. That took place between 1800 and 1823. Under the Thames Navigation Acts, 1788, 1795, and 1812, extensive alterations were made in the river. The old system of winding barges up shoots and rapids with a winch, which of course did not obstruct the passage of the fish, was discontinued, and locks were built in their places, or new cuts were made in the river, and solid weirs erected over which the fish could not pass except in flood times. Lovegrove's diary shows that the falling off in the number of fish commenced in 1805, the take falling from sixty-two fish in 1804 to seven in 1805, and the numbers diminished more or less down to 1821. In 1823 the last salmon ever caught in the Thames was taken near Monkey Island, and sent to the King at Windsor. These dates are coincident with the canalisation of the river. Mr. Walpole, the late Inspector of Fisheries, states that the falling off of the takes of salmon in other rivers was due in his opinion to the erection of the pound locks. It would seem, therefore, that the constant legislation for the protection of salmon was fairly effectual for their preservation till the pound locks began to be erected, and the weirs necessary for their working were built so as to stop the ascent of the fish. These obstructions have been attacked under the Salmon Acts from 1861 downwards with some success,

but a further enemy has come into the water, viz., pollution from manufacturies and by sewage from the great towns, which have grown up near salmon rivers. This enemy the legislature seems unable to successfully repel. The returns of the capture of salmon since 1861 will be found in the reports of the Inspector of Fisheries.

In the review of the entire legislation as to fisheries in Chapter I. of Part II. the numerous Acts relating to the Herring Fishery have not been dealt with, as none of them are now in force. The Acts relating to Whale and Seal Fisheries are included in the list of statutes, but their provisions have not been set out, being considered as being outside the scope of this work. The provisions as to Sea Fisheries and Fisheries for Oysters, Crabs, Lobsters, &c., will be found set out in Chapters II.—VI. of Part II., and the Acts relating to them will be found in the Appendix.

Having regard to the increasing value and importance of rights of fishery, not so much in respect of the profits to be derived from them, as from their importance as adjuncts of amenity to riparian properties, the existence of which adds largely to their market value, owners of fisheries will be well advised to be careful of their rights. They should be careful as to the manner in which they let their fisheries or give licence to fish in them, and as to the terms of the instruments by which this is done. In particular it is advisable that they should exercise these rights regularly, so as to keep up evidence of their possession, and be careful to resist attempts to trespass thereon. It is the experience of the Authors that in almost every case there is considerable difficulty in procuring any body of evidence of recent user, and this is frequently the greatest difficulty of the case. The proof of possession and the exercise of their rights is in fact their true title to them, and is of far more importance in the case of a dispute than the existence or language of their documents of title.

Since freshwater fish, and especially coarse fish, became of little value except for purposes of sport, in consequence of the improved means of communication and the system of preserving fish in ice, owners of inland fisheries have been careless about their rights and have willingly suffered anglers to take their sport when angling as a sport was practised by few, and angling clubs were unknown. Thus they have permitted unauthorised trespasses, not deeming it worth their while to take expensive steps by action at law to prevent them. This long-continued neglect of this species of property has caused doubts to be cast upon their titles and leads to great difficulty when the time arrives that the owner finds it necessary to assert his rights. The exposition of the law relating

to fisheries in this work will, it is hoped, be of assistance to owners of fisheries as a guide to them in asserting their rights and preserving their property.

The Authors' thanks are due to many friends for assistance in collecting materials for this work, and especially to Mr. Scargill-Bird and Mr. Overend of the Public Record Office; also to Mr. R. E. Kirk, Mr. E. F. Kirk, Mr. Boyd, Mr. W. Moens, Mr. A. Heintz, Mr. Watson, and Mr. N. Clifford-Jones, who have supplied them with many references to records which would otherwise have escaped their researches.

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INTRODUCTION.

IN considering the law relating to fisheries in this kingdom, it has been found necessary first to study the history of fisheries in order to ascertain, as far as may be possible, the origin of such private rights and the circumstances under which they came into existence as private property. This has been found necessary because at various periods lawyers have attempted to divide fisheries into various classes, and have given them various denominations with a view of distinguishing one class from another. Theories have been set up as to the nature and attributes of these various kinds. Many of these theories, evolved from the dicta and decisions of Judges and text-writers, appear to have been founded on erroneous or imperfect knowledge of the facts and an almost complete ignorance of the origin and nature of the fisheries themselves. Theories as to the distinction to be drawn between what have been called sometimes "several" fisheries, sometimes "free fisheries," sometimes "common fisheries" and "common of fishery," attributing various conditions of existence to each of the various kinds and attempting to so classify them *nominatim*, that the mere description of each species should be held to denote the nature of its condition and attributes, and to settle what shall pass by such description, have grown up from the time of Lord Coke downwards, and may be found in all text-books and in numerous fully argued and decided cases throughout our books. These theories have led to endless confusion (a). A study, however, of the history of fisheries and the facts relating to them shows that some of these theories have no foundation in fact. They are for the most part mere guesses at what the facts might have been, made by persons who were ignorant of the true facts.

Putting aside these theories, and studying the history of fisheries with a mind unprejudiced by ancient dicta and ancient decisions, we are driven to the conclusion that fisheries *in their origin* were profits of the soil over which the water flowed in which the fish were taken, whether in tidal or non-tidal waters. This conclusion has in these

(a) *Malcolmson v. O'Dea*, (1862) 10 H. of L. Cas. 593, per Willes, J.

latter days come to be recognised in the form of a settled presumption that in the absence of evidence to the contrary the owner of a several fishery is presumed to be the owner of the soil (*b*). If, therefore, a fishery can be shown to have existed from ancient times unaltered in its nature by any act of its owners, as is frequently the case of a fishery parcel of a manor, it is certain that the ownership of the fishery is accompanied by the ownership of the soil, or, to put the case more accurately, the ownership of the soil covered with water having become vested in the owner thereof, he is entitled to the profit of that soil, viz. the fish, as he would be of the grass of other lands (*c*). Where, however, a fishery has been dealt with by the owner of the soil, and has not remained in its original condition, it may have become an incorporeal right. The owner of the soil may grant the right to take the fish entirely, but reserving the soil, or he may grant a partial right; and instances of incorporeal fisheries do exist, although they are of infrequent occurrence (*d*). Where they do exist, they must have had their origin in a grant from the owner of the soil; and Blackstone lays it down, quite accurately, that "the owner of a several fishery must be, or must derive his right from, the owner of the soil" (*e*). Fisheries, whether in tidal or non-tidal waters, must therefore be regarded *prima facie* as profits of the soil over which the waters flow.

Hitherto in all works upon the law of fisheries, from Bracton and the celebrated treatise of Lord Hale downwards, the facts as to the origin, nature and ownership of fisheries have been gathered by the text-writers from experience of reported cases and records, so far as they were known to the writers of those works. Propositions of law deduced from this knowledge, or from examples taken from old records relating to the disputes as to the titles of fisheries, have been laid down; dicta have been set up and followed in case after case; presumptions of law and presumptions of fact have been made and established, and the law of the fisheries has thus been arrived at by a deductive process. The deduction has not always been made from a complete knowledge of the true facts. Except by Lord Hale, whose knowledge of ancient records was marvellous, no serious attempt appears to have been made to set up any theory of, or to ascertain the true origin of, the rights of fishery, or to deduce from the study of such origin the various legal processes by which such rights have either come into existence or become varied in their

(*b*) *Att.-Gen. v. Emerson*, [1891] A. C. 649; *Hindson v. Ashby*, [1895] 2 Ch. 1; *Neill v. Duke of Devonshire*, [1882] 8 A. C. 152.

(*c*) *Y. B.* (1495), Trin. 10 Hen. VII. pl. 1.

(*d*) *Att.-Gen. v. Emerson*, [1891] A. C. p. 654.

(*e*) Blackstone, II. 39; Chitty, Game Laws, p. 295.

nature and extent by the acts of the owners of them or the operation of law.

It may therefore be of use and advantage to consider the ancient evidence which we have relating to fishery rights, with a view of deducing therefrom the probable origin and the true nature of the various rights of fishery which now exist. A consideration of the earlier evidence from this point of view may lead to a clearer understanding of the nature of the fishery rights in question in the particular case under consideration, and assist us in difficult cases in arriving at the true conclusion to be deduced from the evidence of the facts, whether it be a fishery in tidal or non-tidal waters.

It will be well to first consider the propositions of law which have been laid down by the older authorities, Bracton, and Lord Hale, who comments upon the passages in Bracton, and adds his own conclusions, derived from his knowledge of ancient records relating to fisheries.

With regard to tidal waters, Bracton copies directly from the "Institutes of Azo" (*f*). "Publica sunt omnia flumina et portus ideoque jus piscandi omnibus commune est in portu et in flumine." By the word "flumen," as appears from the context, tidal water is intended. Here Bracton is stating only a *prima facie* case, as he was, of course, well aware that there existed in his time several fisheries in many tidal waters. Hale (*g*), referring to this passage, says: "It must be taken rivers that are arms of the sea and *primo intuitu*; for, *de facto*, there doth fall out in many ports and arms of the sea an exclusion of public fishing by prescription or custom." Hale (*h*) ascribes the origin of the public right of fishing in tidal waters to the King's ownership of the soil of the sea. He says: "The King's right of propriety or ownership of the sea and soil thereof is evidence principally in these things that follow."

"First, the right of fishing in the sea and the creeks and arms thereof is originally lodged in the Crown, as the right of depasturing is originally lodged in the owner of the waste whereof he is lord, or, as the right of fishing belongs to him that is owner of a private or an inland river." "But though the King is owner of this great waste, and as a consequent of his propriety, hath the primary right of fishing in the sea and the creeks and arms thereof, yet the common people of England have regularly a liberty of fishing in the sea or creeks and arms thereof, as a public common of piscary, and may not, without injury to their right, be restrained of it, unless in such places, or creeks, or navigable rivers where either the King or some particular subject hath gained

(*f*) Lib. ii. c. 12. Moore on Foreshore, p. 32.

(*h*) P. 376.

(*g*) De Jure Maris, p. 378.

a propriety exclusive of that common liberty" (i). In Chapter 5 Hale points out how the subject may acquire a right of fishing in the sea by grant or prescription. "The King may grant fishing within a creek of the sea or in some known precinct that hath known bounds that are within the main sea. He may also grant that very interest itself, viz., a navigable river that is an arm of the sea, the water and the soil thereof." "A subject may by prescription have the interest of fishing in an arm of the sea, in a creek or port of the sea, or in a certain precinct or extent lying within the sea, and these not only free fishing but several fishing" (k). "Fishing may be of two kinds ordinarily, viz., the fishing with the net, which may be either as a liberty without the soil, or as a liberty arising by reason of and in concomitance with the soil or interest or propriety of it; or otherwise it is a local fishing as ariseth by and from the propriety of the soil. Such are *gurgites*, weirs, fishing places, *borachia*, *stachia*, &c., which are the very soil itself, and so frequently agreed in our books. And such as these a subject may have by usage either in gross, as many religious houses had; or as parcel of or appendant to their manors, as both corporations and others have had; and this not only in navigable rivers and arms of the sea but in creeks and ports and havens, yea and in certain known limits in the open sea contiguous to the shore." "Now for precedents touching such rights of fishing in the sea and arms and creeks thereof belonging by usage to subjects, the most whereof will appear to be by reason of the propriety of the very water and soil wherein the fishing is, and some of them even within the ports of the sea" (l). And here Lord Hale sets out divers instances from records to prove his proposition, and says that infinite more of this kind might be produced (m).

With regard to non-tidal water Bracton refers to the right of fishing in the chapter dealing with "*Liberum tenementum*" (n) as follows: "*Item dici poterit liberum tenementum alicujus per se vel in communi piscare in feodo proprio: ut si quis terram possideat prope ripam ex utraque parte aquæ, per totum licebit ei piscare sicut in libero tenemento suo sine impedimento alicujus, et si quis eum impediverit, facit ei disseisinam, nec competit ei hoc facere in proprio ex aliqua impositione servitutis, cum nemini serviet, fundus proprius. Item si tantum ex altera parte prædia possideat prope ripam, tenementum suum erit usque ad filum aquæ, et sua*

(i) Hale, *De Jure Maris*, p. 377.

(k) *Ibid.*, p. 384.

(l) *Ibid.*, p. 385.

(m) *Ibid.*, p. 388.

(n) Lib. 4, cap. 28, sect. 4.

erit piscaria et jus piscandi sine alio, nisi forte ita sit quod servitutem imponat fundo suo quod quis possit piscare cum eo, et ita in communi, vel quod alius per se ex toto; et quod quis sibi servitutem imposuerit quod ipse non possit. In communi autem piscare poterit vicinus cum vicinis ex vicinitate vel pro certo pretio vel ex longo usu ad similitudinem juris pascendi in alieno."

Lord Hale (ch. 1) follows Bracton: "Fresh rivers, of what kind soever, do of common right belong to the owners of the soil adjacent; so that the owners of the one side have, of common right, the propriety of the soil, and consequently the right of fishing *usque filum aquæ*; and the owners of the other side the right of soil or ownership and fishing unto the *filum aquæ* on their side. And if a man be owner of the land on both sides in common presumption he is owner of the whole river and hath the right of fishing according to the extent of his land in length. With this agrees the common experience"—"but special usage may alter that common presumption; for one man may have the river and others the soil adjacent; or one man may have the river and soil thereof, and another the free or several fishing in the river" (o).

Thus we see that Lord Hale, referring to non-tidal waters, sets out a general statement, which is no doubt the result of the examination of cases within his extensive knowledge. That result is that, in the majority of cases, the presumption of the riparian ownership of the soil and fishery to the mid-stream is the rule, but to this rule he is careful to state that there are exceptions, and experience of the history of fisheries shows that these exceptions are numerous.

As regards fisheries in tidal waters, Lord Hale states that they may be fisheries with the soil or fisheries without the soil; and he gives examples of such fisheries belonging to subjects, observing that they are all fisheries with the soil, but he gives no example of an incorporeal fishery, and he shows that the ownership of a fishery worked with fixed engines implies the ownership of the soil.

Except as regards royal fish (whales, porpoises, sturgeons, &c.), we find nowhere any suggestion that there existed any prerogative right in fish either in tidal or non-tidal waters, as in the nature of *feræ nature* or game under the English law; not even in salmon (as there is in Scotland), and Hale points out that salmon is not a royal fish (p). Bracton (q) lays it down as common law that fishes generally are animals which are born in the sea, which when they are taken belong to the captor; but he distinguishes royal fish and wild beasts and undomesticated birds as belonging to the King by his

(o) Hale, *De Jure Maris*, p. 370.

(p) Hale, *Ibid.*, p. 412.

(q) Lib. 1, cap. 12, sect. 60; lib. 2, cap. 1, sect. 2.

prerogative (*r*). It was considered by the early writers on the Common Law of England that although the dominion and jurisdiction of the sea belonged to the Sovereign, the free and universal rights of fishing and navigation exercisable under his jurisdiction and protection belonged to the subject (*s*). How and in what manner the Crown acquired the right to interfere with the exercise of the public right of fishing in tidal waters, we know not. Schultes (*l*) suggests that innovations were gradually introduced, and princes on the Continent, by a specious pretext that the universal promiscuous liberty of fishing occasioned disputes and was productive of pernicious consequences, assumed to themselves that privilege absolutely to the exclusion of their subjects; and none were permitted to exercise the occupation of fishing but those who had obtained a license from the Crown, for which a tribute was paid; by which means considerable revenues flowed into the public treasury and were regarded as part of the Regalia of the Crown. Schultes (p. 98) states that by the laws of France the right of fishing was formerly vested exclusively in the Prince, and the profits thereof were accounted the *regalia* of the Crown, and in Scotland salmon fishery is part of the *minora regalia*. It seems probable that the Conqueror brought over the idea that fishery in tidal waters was one of the *regalia*, and that he exercised the prerogative right to grant several fisheries and exclude the public from fishing in particular localities. An entry in Domesday Book (fo. 183) relating to Dunre, in Herefordshire, shows the public fishing had been excluded at that spot. "In aqua vero nemo piscatur sine licencia." Domesday Book (p. 280) also shows that the burgesses of Nottingham used to fish in the Trent and complain that they are now forbidden to do so. "In aqua Trente soliti erint piscari et modo querelam faciunt eo quod piscari prohibentur."

In whatever way the right to create several fisheries in tidal waters arose, it is clear that in early times before the reign of Henry II. the power was extensively exercised, and several fisheries which are now in existence almost completely cover the whole of the tidal estuaries and many parts of the coasts of the kingdom. Text-writers deriving their knowledge only from decided and reported cases have considered that these fisheries so granted were exceptional and few in number (*u*). This is a fallacy, for it can be shown by records that they existed in almost every piece of tidal water round the coasts which was naturally available for the profit-

(*r*) Lib. 2, cap. 24, sect. 1. See Schultes, pp. 17, 18.

(*s*) Schultes, p. 6.

(*t*) Aquatic Rights, p. 6.

(*u*) Hall on Seashore, p. 716.

able exercise of an exclusive fishery. Numerous several fisheries in tidal waters were in existence before the date of Domesday (*v*), and in non-tidal waters the fisheries appear to have been all appropriated to the lords of the manors (*x*).

In the following chapters we have endeavoured to extract the evidence of ancient records and decided cases which may help to throw light upon the origin and history of fisheries and the manner in which they have been dealt with by the owners of them, and it is hoped that a study of the facts collected may be of service in solving many of the doubts, and of clearing up much of the confusion that has arisen in the past as to the nature and conditions of the fisheries now in existence.

(*v*) See List of Fisheries, *post*, p. 400.

(*x*) See Lists of Fisheries, *post*, p. 407.

FISHERIES.



PART I.

CHAPTER I.

OF THE EVIDENCE AS TO FISHERIES IN DOMESDAY BOOK.

DOMESDAY Book has many references to fisheries existing at the date of that survey. In some of the counties the commissioners who valued the manors have returned the profits more carefully than in others. In Berkshire 36 manors are returned as having fisheries; in Buckinghamshire, 17; in Cambridgeshire, 30; in Chester, 18; in Devon, 14; in Essex, 30; in Gloucestershire, 15; in Hampshire, 17; in Hereford, 13; in Hertfordshire, 12; in Huntingdonshire, 1; in Kent, 51; in Lincolnshire, 42; in Middlesex, 11; in Norfolk, 36; in Nottinghamshire, 19; in Oxfordshire, 20; in Shropshire, 17; in Somerset, 7; in Suffolk, 21; in Surrey, 10; in Sussex, 20; in Worcestershire, 15; in Yorkshire (where it was not wasted at the time of the survey) 10 manors.

In Bedfordshire, where the rivers are small ones, we have no return of any fishery by that name, but we find 16 manors in which there is a return of the rent of the mill with a rent in eels, *e.g.* "*ij molendine de 40s. et 120 eels*" (a). This eel rent appears by comparison of other entries to show that the fishery in the manor was let with the mill to the miller. Eels at this period were considered the choice fish, and throughout Domesday Book we continually find this rent of eels as rent of fisheries, *e.g.* (p. 149) Eyreham (Bucks), "*De iij piscariis 1,500 eels et pisces per diem veneris ad opus prepositi ville*"; (p. 150 s), Medmenham (Bucks), "*De piscar mille anquillas*," and in this county the rent or value of all the seventeen fisheries is returned in eels. The case is the same in Cambridgeshire. In Hertfordshire all the rents or values of fisheries are in

(a) At a later date we find several fisheries in nearly all the rivers in Bedfordshire. See *post*, p. 43.

eels, *e.g.* (p. 136 b) Hemelhamstead, "*iiiij molendinae de 37s. 4d. et 300 eels, less 25*"; (p. 137 b) Hodesdon, "*De gurgite c. anguillas*" (p. 139) Odesdone, "*De piscar̃ cl. anguillas.*" In Kent we find rents in eels and rents in money for fisheries, and one fishery rendering herrings, (f. 10 b) Dodeham, "*dimidia piscaria de ecc allecibus.*" In Leicestershire we find no return of either fisheries or eel rents; whatever fisheries existed were probably valued with the mills. In Northamptonshire there is no mention of any fishery, but many returns of mills valued and money and eel rents. In Oxfordshire there are fisheries rendering rent in money; mills rendering rent in money and eels; mills with fisheries valued together; (p. 156) Cersetone, "*De molino et piscaria 15s. 6d. et clxxv angillas*"; Codesdone, "*Ibi molinum et ij piscarie de xijs*"; (160) Estone, "*Ibi molinum cum piscaria reddans xxrs.*" There are also rents from fishermen who must have rented parts of or the whole of the manorial fishery, *e.g.* (f. 154 b) Dorchester, "*Piscator reddit xxx stickas anguillarum*" (b); (158) Haiforde, "*ij piscatores de 900 anguillis.*" In Shropshire we find fisheries rendering rent in money and also in eels, mills rendering rent in eels, or in eels and money: (f. 283 b) Achelow, "*Molinum et piscaria de MDij anguillis magnis*"; Edmendale, "*Ibi molinum cum piscaria reddens xs*"; (f. 257 b) Udeford et Ruitune, "*v piscarie in censu villanorum*"; (f. 254 b) Etune, "*Ibi piscaria in Taverna nil reddens.*" In Warwickshire no fishery is mentioned, but there are many cases of mills rendering eel rent. In Wiltshire no fishery is mentioned. In Worcestershire nearly all the fisheries render their rent in eels and the case is the same in Yorkshire. It would seem therefore that where we find a rent of eels returned as part of the profits of a manor in Domesday Book, there is a strong presumption that the fishery was let with the mill or included in the valuation made by the commissioners in the valuation of the mill. If this be so it could be shown that fisheries existed in almost every stream in the kingdom. The returns for the counties of Berkshire, Buckinghamshire and Oxfordshire, show that the Thames contained a succession of manorial fisheries throughout its course through those counties. Besides rents in eels we have rents in salmon from fisheries in the counties of Chester, Devon and Hereford, and in one case, Petresham in Surrey (f. 32 b), a rent in eels and lampreys, "*piscaria de milla anguillis et milla lampredis.*"

The word usually employed in Domesday to denote a fishery is "*piscaria.*" but a comparison of the Exon Domesday for Devonshire which is the original return of the commissioners for that county,

(b) A stick of eels contained usually twenty-six eels.

which was afterwards abbreviated in Domesday Book itself, shows the use of the words "*piscatoria*," "*piscature*," "*piscatio*," "*pescatio*," which are all rendered "*piscaria*" in Domesday. In the Essex return we have the words "*piscina*" and "*piscaria*" used apparently indifferently to mean the same thing. There are many references to weirs as "*guorts*," "*gurgites*," these being the engines at which the profits of the fisheries were taken (*c*). At Lackinghethe, in Suffolk (f. 392), we find reference to a fishing-boat, "*Ibi iiij piscarie in Eli et navis ad piscandum*." At Saham, in Cambridgeshire (f. 192), seines are referred to, "*Ibi est una piscator habens j sagenam in lacu ejusdem ville*." Also (f. 195 b), "*In Mara de Saham j sagenam consuetudine*." In Canelia (Chester) (f. 260), "*Ibi navicula et rete*"; Hundetone (Chester), "*navicula et reta*." The fishery at Hampton Court, Middlesex, is clearly a fishery throughout the manor (f. 130), "*De sagenis et tractus in aqua Tamisie ijs*."

A careful examination of Domesday Book unquestionably shows that at least in non-tidal and inland waters several fisheries existed in almost every river and lake in those parts of the kingdom to which the great survey relates. Nor must the evidence of Domesday be taken negatively for the purpose of arguing that because no fishery is referred to as belonging to a particular manor, no fishery therefore existed. We find frequent mention of "half a fishery," "*dimidia piscarie*," as belonging to a manor, and yet it appears that the other half of the fishery is to seek. A remarkable instance of this occurred in the author's experience. In the return for Were (Wear Gifford, Devon, f. 115) we read, "*Ibi dimidia piscaria reddens xl. denarios*." The manor of Wear Gifford is situate on the river Torridge, and belongs to the family of Pine Coffin; the manor on the other side of the river is Monkton, belonging to Lord Rolle. The fishery of the river is fished by a salmon hatch built in the mill of Wear Gifford, and the profits of this hatch have, from the time of Charles I., and from time immemorial, been regularly divided between the two lords of the two manors, the fish being divided equally, and when an odd fish occurred, this was cut in halves. But when we turn to the return relating to the manor of Monkton (Domesday, f. 106 b) we find no mention of any fishery or half fishery, although it must have existed.

With regard to the existence of several fisheries in tidal waters, Domesday shows many several fisheries then in existence. In Chester we find fisheries returned at Stannay, Halton, Weston, Aston, and Norton, on the Mersey, and at Saughall, Gayton, and Leighton, on the Dee. In Devon we find fisheries at Bideford,

(c) See *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. at p. 144.

Northam, and Cornworthy, on the Dart. In Essex there were fisheries at Bemflete, Southchurch, Clackton, Mucking, Tollesbury, Mersea, Fambridge, Tilbury, and Thurrok (Grays). In Gloucester there were fisheries at Chepstow, Tewkesbury, Tidenham, Hempstead, Modiete, Gloucester, Odalvestune on the Severn, Lidney, and Longney. In Hampshire there were fisheries at South Stoneham on the Itchen, Porchester, Dibden (Hythe, near Southampton), Southampton, Hayling. In Kent there were fisheries at Milton next Sittingbourne, Northfleet, Reculver, Monkton in Thanet, Sesalter, Apledore, Swanscomb (Greenhithe), Lesnes (Erith), Barling, Chatham, Stoke and Hoo on the Medway, Higham on the Thames, Oare on the Swale, Dodeham returning a rent in herrings, Thanet, Newington on the Medway. In Lancashire, between the Ribble and the Mersey, the fisheries in the great manor of West Derby, which embraced all the shore from Warrington on the Mersey to the river Ribble, appear to have been all kept in the hands of the King at the time of Domesday Book, and the King's tenants were bound, amongst other services, to keep them in repair (f. 269). In Lincolnshire we find fisheries at Torksey on the Trent, Gedney, and Wintringham. Possibly other sea-coast fisheries may have existed, but the Domesday names are not easily identified, and so much of the sea coast has been washed into the sea that the places have disappeared. In Middlesex we find weirs at Fulham and Isleworth. In Norfolk we find fisheries at Horningtoft, Rising, Smithedun, Snetesham, Hunstanton, and Welles, and possibly there are others not easily identified with the modern names of places. In Nottinghamshire we find that at Nottingham the burgesses had been in the habit of fishing, but had been forbidden to fish in the Trent, which is tidal. In Suffolk we find fisheries at Ludinglond (Gorleston), Hollesley, and Waltham. Possibly there are others. In Surrey there are fisheries at Kingston, Mortlake, Petersham. In Sussex we find fisheries at Bosham, and in the tidal river Arun, viz., at Arundel, Offham, Warningcamp, Wepham, North Stoke, South Stoke, Bury, Greetham, and Stopham.

We see, therefore, that as early as Domesday Book there were "fisheries" in many tidal waters within the kingdom, but it must not be too hastily assumed that there were "several fisheries" from which at that period the public right of fishing had been excluded. Domesday (except in the case of Nottingham) affords no clear evidence of this. The word "*piscaria*" in Domesday often is clearly used to mean the weir or fishing engine only, e.g. Middleton, Hants (f. 43 b), "*Piscaria fuit modo non est*"; Monoestune, Kent (f. 4 b), "*Ibi nova piscaria*"; Belingei, Lincolnshire (f. 340).

"*Ibi sedes piscarie*"; Wintringham, Lincolnshire (f. 354 b), "*passagium et sedes piscarie*"; Todenham, Suffolk (f. 403), "*una piscaria fuit sed modo non est*"; Mortlake, Surrey (f. 30 b), "*Hanc piscariam habuit Heraldus in Mortlaga tempore Regis Edwardi et Stigandus Archiepiscopus habuit diu tempore Regis Willelmi et tantum dicunt quod Heraldus eam construxit in tempore Regis Edwardi in terra de Cingestune et in terra Sancti Pauli.*" The existence, however of a weir shows that there existed a fishery, the weir being the engine of capture of the fish in that fishery, which may extend over a large stretch of the river in which the weir is built (*d*).

d) *Neill v. Duke of Devonshire*, (1882) 8 A. C. pp. 143, 144; *Malcolmson v. O'Dea*, (1862) 10 H. of L. Cas. 619, 620; *Haabury v. Jenkins*, [1901] 2 Ch. at p. 412.

CHAPTER II.

OF PUTTING RIVERS IN DEFENCE.

No record appears to exist to show us in what manner the King exercised his prerogative (if he did so exercise it) to exclude the right of public fishing in tidal waters. Possibly this may have been done by a writ to the sheriff to make proclamation; but as nearly all the records of the realm before the reign of John have been lost, no trace can be found of any such mandate. It is evident that many fisheries in tidal waters were made several and the public right excluded before the reign of King Henry II. When the entire kingdom, land and water, was in the hands of the Crown, the King could exclude the public, and either keep the fishery in hand, as at Nottingham (Domesday, f. 280), or grant the several fishery to a subject, either as part of a manor, or as a fishery in gross. In non-tidal waters, where the right to fish depended on the possession of the soil, there was never any right in the public, and the fishery passed usually as land covered with water within the ambit of a "*terra*," or territory granted, which subsequently was known as a manor. We find, however, that the expression "to put in defence" is used with regard to non-tidal as well as tidal waters. In an assignment of dower of lands at Olney in Buckinghamshire (*a*) we read: "Item quanta pars piscarie que est *in defenso*"; "habent defensum in aqua de Sore (co. Leic.) que solebat esse communis" (*b*); "defensum in aqua de Wreyk" (co. Leic.) (*c*). The lord of Somerton has "piscaria in defenso in aqua de Cherwell" (co. Oxon) (*d*). Many similar instances will be found in the descriptions of fisheries set out in a later chapter, from which it appears that "putting in defence" meant both as to tidal and non-tidal waters the exclusion of public fishing, and the taking of the fishery into severalty or exclusive private ownership. There is, therefore, no magic in the expression "putting in defence." It was done by subjects as well as by the King, and it seems probable, as will appear below, that it was not an exercise of any prerogative right, but rather an act of dominion

(*a*) Close Roll, 12 Edw. I. m. 8 d.

(*b*) Hundred Rolls, I. 235.

(*c*) *Ibid.* 240.

(*d*) *Ibid.* II. 710.

exercised by the owner of the soil over which the water flowed, whether he happened to be the King or a subject.

On grants of fishery, both in tidal and non-tidal waters, the King has been said to have reserved a special right to himself, a right in the nature of a sporting right, or, as Lord Hale calls it, "an interest of pleasure and recreation." Under this reservation down to the time of the Great Charter the King is said to have claimed a right to stop fishing and fowling upon all and every river in the kingdom at such periods as he pleased, in order that he might come there to fish and fowl; and this right was a limitation on the owners of several fisheries, whose interests in the rivers were held subject to it. The right was burdensome, because, in addition to the injury to the fisheries, there was an obligation on the county to make and repair bridges to allow the King to pass in the exercise of his sport.

Lord Hale (c), writing "Of the right of prerogative in private or fresh rivers," says: "The King by an ancient right of prerogative hath had a certain interest in many fresh rivers, even where the sea doth not flow or reflow, as well as in salt or arms of the sea"—*inter alia*—"An interest, as I may call it, of pleasure or recreation. Before the Statute of Magna Charta, cap. 16, it was frequent for the King to put as well fresh as salt rivers *in defenso* for his recreation; that is, to bar fishing or fowling in a river till the King had taken his pleasure or advantage of the writ or precept *de defensione riparie*, which anciently was directed to the sheriff to prohibit rivation in any rivers in his bailiwick. But by that statute it is enacted, *quod nullæ ripariæ defenduntur decætero, nisi illæ quæ fuerunt in defenso tempore Henrici regis avi nostri, et per eadem loca et per eosdem terminos, sicut esse consueverunt tempore suo*.

"After this statute the *Ripariorum defensiones* ran thus, as appears *Claus. 20 N. 3, m. 3 dorso. Claus. 22 N. 3, m. 2 dorso, et sæpius alibi*.

"*Rex Vicecomiti Wigornie salutem. Præcipimus tibi, quod sine dilatione clamari facias et firmiter prohiberi ex parte nostra, ut nullus de cætero eat ad riciandum in ripariis nostris in balliva tua, quæ in defenso fuerunt tempore Henrici regis avi nostri; et scire facias omnibus de comitatu tuo, qui ab antiquo facere debent pontes ad riparias illas, quod provideant sibi de pontibus illis, ita quod prompti sint et parati in adventu nostro quando eis scire faciemus*.

"And thus it was written to most counties.

"But because this left the country in a great uncertainty in the writs of 22 H. 3, so afterwards it mentioned some one particular river.

"*Et in alijs riparijs in ballivâ tuâ, quæ in defenso esse consueverunt tempore Henrici regis avi nostri ;*

"As Avon in Worcestershire, Bladen in Oxfordshire, Mules in Surrey, &c.

"This hath been long disused, for it created a great trouble to the country, and little benefit or addition of pleasure to the King."

There is, however, grave doubt as to whether the King reserved or exercised any right of fishing. The King's sport seems rather to have been fowling than fishing. The earliest writ we find is dated 13th November, 19 Henry III., A.D. 1234 (*f*). It was addressed to the sheriffs of Essex, Hertford, Somerset and Dorset, and orders them to cause all bridges in their bailiwicks to be repaired, "*ita quod Domino Regi et suis libere pateat transitus cum avibus suis per omnes riparias ballivæ tuæ.*" The next writ is dated at Windsor 1st December, 19 Henry III., A.D. 1234 (*g*). It is addressed to the sheriff of Berkshire. It orders him to cause the bridges to be repaired in the places which were accustomed in the time of King John, so that the King can have free transit *with his birds* and also orders him to proclaim and to prohibit on behalf of the King, "*ne quis super ripariam de Kennet riviare præsumat.*" There is a writ dated at Kennington 26th December, 19 Henry III., A.D. 1234 (*h*), ordering the bridges upon the waters of Avon, Test and Itchen to be repaired as was accustomed in the time of King John, "*ita quod cum Dominus Rex ad partes illas venerit libere sibi pateat transitus ad riviandum super riparias prædictas. Et prohiberi facias ne aliquis riviare præsumat per riparias illas antequam Rex illia venerit.*" The Avon and the Test were all occupied at this period by several fisheries belonging to the lords of manors on their banks. The entire river Itchen and the fishery in it was then in the possession of the Bishop of Winchester. These writs evidently referred to particular sporting expeditions of the King. On 21st September, 19 Henry III., A.D. 1235 (*i*), he issued a more general prohibition. Writs were sent to the sheriffs of Surrey, Southampton, Wilts, Dorset, Somerset, Berks, Gloucester, Worcester, Stafford, Essex, Hertford, Warwick, Leicester, Rutland, Cambridge, Huntingdon, Nottingham, Derby, Bedford, Bucks, Oxford and Northumberland ordering them to proclaim "*ut nullus decetero ad riviandum in ripariis nostris in balliva tua quæ in defenso fuerint tempore Regis Henrici avi nostri præsumat*"; and also to order the men of the counties to provide bridges to the rivers, "*ita quod prompti sint et parati in adventu nostro quam eis scire fecerimus.*" On 15th September, 20 Henry III., A.D. 1236 (*j*), there were similar writs

(*f*) Close, 19 Hen. III. p. 1, m. 25.

(*g*) *Ibid.*, m. 3 d.

(*h*) *Ibid.*, m. 23 d.

(*j*) Close, 20 Hen. III. m. 3 d.

(*i*) *Ibid.*, m. 21.

dated at Newcastle to the sheriffs of nearly all the counties south of the Trent (except Devon and Cornwall, Kent, Surrey and Sussex) in the same words.

On 25th September, 22 Henry III., A.D. 1238 (*k*), writs were sent from Shrewsbury to the sheriff of Worcester to put the Avon in defence between Pershore and Evesham, and to the sheriff of Oxford for the river Bladen, and to the sheriff of Surrey, "*ne quis cat ad riviandum in brachio aque de Mules*" (Mole). On 12th September, 24 Henry III., A.D. 1240 (*l*), writs were sent from Woodstock to the sheriffs of most of the southern counties in the usual form, "*quod nullus cat ad riviandum in ripariis nostris*," and also in September, 25 Henry III., A.D. 1241 (*m*). On 26th September, 30 Henry III., A.D. 1246, there is a writ to the sheriff of Wilts, and another on 5th October, 30 Henry III., A.D. 1246, dated from Chertsey, "*quod nullus cat ad riviandum in ripariis Regis*," and that bridges be ready against the King's arrival, "*et hoc erit primo die Lune instantis mensis*." The practice of sending these writs to a number of counties, which appears to have prevailed down to 25 Henry III., A.D. 1241, must, as Lord Hale says, "have left the country in great uncertainty," and we see that afterwards the particular river on which the King wished to sport was named, and in the last writ the date of his arrival is announced. The writ of 5th October, 31 Henry III., A.D. 1247, is the last of its kind that we find. At this period the King was in straits for money, and the relations between himself and his Parliament were very strained. The exercise of this right of rivation must have been very unpopular, and it appears to have been given up. We find no further trace of its exercise during reign of King Henry III.

The nature of this right of rivation was discussed in the case of *Duke of Devonshire v. Pattinson* (*n*). Lord Justice Fry, in delivering the judgment of the Court, doubted whether the prerogative right could have authorised the King to close the river against the owner of the soil or to assert any right in the river, except in preparation for a royal visit; also, whether the right was not purely of a personal character, existing only for the pleasure of the King and his Court, and whether it could be granted by the King so as to be a franchise in the hands of a subject; and, comparing it to the prerogative of purveyance, thought that it could not be transferred to a subject. The doubt expressed by Lord Justice Fry leads to the consideration of the question whether this prerogative right of recreation had anything to do with fishery at all. The evidence of

(*k*) Close, 22 Hen. III. m. 3 d.

(*l*) Close, 24 Hen. III. m. 1 d.

(*m*) Close, 25 Hen. III. m. 4 d.

(*n*) 1887) 29 Q. B. D. 265.

all records relating to it points strongly to the conclusion that the right was a right of hawking and taking swans and "*volucres ripariarum*," and not to a right to fish and fowl. We know that the wild swan was a royal bird, to which the King had a right by the prerogative, and it would not be wonderful if in the time of King Henry III. other birds breeding upon rivers which were the subject of the royal sport of falconry were deemed to be the King's, and that the Sovereign claimed a prerogative right of fowling on all rivers for the exercise of falconry, and claimed the right to prevent the owners of the rivers, who had no right to wild birds, as swans, herons, &c., from taking them at a period when the King desired to go hawking. The exercise of such a right *per se* would not have been very burdensome, but annexed to the right and incident to it was the right to compel the country to build bridges for the King to pass over, "*cum avibus suis*." This of course was a heavy burden, and we can easily understand the desire of the Barons to save themselves and their tenants from this tax by getting the clause of the charter limiting the prerogative to those rivers which had already been put in defence and probably were provided with the necessary bridges.

A comparison of the charter of 15th June, A.D. 1215, with the charter of 9 Henry III., the "Great Charter," leads to the conclusion that the primary object of the Barons was to release the country from the burden of building and repairing the bridges, and that the restriction of the King's general rights of sporting both in rivers and in forests was what was aimed at. In John's charter the clause is "*Nec villa nec homo distringatur facere pontes ad ripariam nisi qui ab antiquo et de jure facere debent*." Then later on comes a subsidiary provision: "*Omnes foreste quæ afforestate sunt tempore nostro sint de afforestate et ita fiat de ripariis que per nos posita sunt in defenso*." In Henry the Third's charter these provisions are brought together: "*Ne villa nec homo distringatur facere pontes*," &c., and "*Nulle riparie de cetero defendantur nisi ille que fuerunt in defenso tempore Regis avi nostri per eadem loca et eosdem terminos sicut esse consueverunt tempore suo*." The clause as to the forest is left out, the question of the King's forestal rights having been settled by the Charter of the Forest of 2 Henry III.

The earliest writ of rivation is dated 13th November, 19 Henry III., A.D. 1234. It orders the sheriffs to repair the bridges on the rivers in their bailiwicks, "*ita quod Domino Regi et suis libere pateat transitus cum avibus suis per omnes riparias ballivi*." The writ of 1st December, 19 Henry III., A.D. 1234, to the sheriff of Buckingham has the same words and orders that no one shall

presume to "riviare" before the King came. The writ of 15th September, 20 Henry III., A.D. 1235, uses the same form. The later writs omit the reference to the King's birds, and are in the form printed by Hale. The latest in date is dated 5th October, 31 Henry III., A.D. 1247, and this appears to have been the last issued by King Henry III. Hale states that the right fell into disuse, for it created a great trouble to the country, and little benefit or pleasure to the King. The disuse, however, was later than the time of King Henry III., for we find three cases in the reign of Edward I., in which the right was exercised by licensees of the King, and the language of these licences is almost conclusive to show that the right was a right of fowling and not of fishing.

There is a writ dated 28th October, 11 Edward I., A.D. 1283, addressed to all sheriffs and bailiffs, stating the King had given license to Gilbert de Clare, Earl of Hereford, "*quod in presenti sesona hyemali per riparias nostras de Lauwe et Frome que sunt in defenso riviare et aves ripariarum hujusmodi capere possit sine occasione vel impedimento nostro seu ballivorum nostrorum quorumcumque*," and ordering them to allow him to rivate and take such birds on the said rivers (*per predictas riparias riviare et hujusmodi aves capere permittatis*). This is a license to fowl rather than a license to fowl and fish. At this period Gilbert de Clare was the owner of the castle and manor of Wareham, of which the fishery in the rivers Frome and Puddle was parcel. The earl had the right to fish but had not the prerogative right to take wild swans and the "*volucres ripariarum*." The river Lowe was probably the then name for the river Trent or Piddle. The two rivers were afterwards known as the "north and south rivers of Wareham," and the fishery in them was granted out by Queen Elizabeth "with all rights and liberties of fowling, hawking and taking swans and other fowl in the said rivers and on the banks thereof."

There is a writ dated 13th October, 11 Edward I., A.D. 1283, by which the King grants to Reginald Fitz Peter "*quod riviare possit per totam ripariam nostram de Kennett in instanti sesona et aves capere et asportare quo voluerit sine omni occasione vel impedimento nostri vel ballivorum nostrorum*." This again is clearly a license to fowl—not to fish. There is another writ dated 28th September, 12 Edward I., A.D. 1284, by which the King gives license to Henry de Lacy, Earl of Lincoln, "*quod in riparia de Sture et alias riparias nostras infra comitatus Dorsetie, Somersetie et Wiltscire in defenso positas riviare possit sine falconibus in yeme instanti*." Here we have a limited license to fowl, probably limited to taking duck and the smaller kind of river fowl, and excluding swans and herons, which could only be taken by falcons. There is no suggestion of any right to take fish.

By a writ dated 6th October, 47 Edward III., A.D. 1373 (o) the King commanded the sheriff of Oxfordshire that he should make proclamation that all bridges should be repaired and all fords marked out with stakes and piles "*pro deductu nostro cum falconibus nostris in instanti seisona yemali*," and that he should compel the people to execute the work so that by their default no peril shall arise to the King and others in his company, "*seu dictis falconibus nostris in adventu nostro in partibus illis*." Here there is clearly no suggestion of any right in the King to fish, and at this period it is abundantly clear that all the rivers in Oxfordshire were occupied by several fisheries in the hands of the lords of the manors on the banks (p).

The manor of Ilmere, in Buckinghamshire, was held of the Crown in 13 Edward III., A.D. 1339 (q), by William Fitz Bernard, a descendant of John de Molyns, by the service of being the Master of the Hawks, "*Mariscallus austurcorum falconum et aliorum avium Domini Regis de deductu riparie*," and he had the office of the superior custody "*omnium austurcorum falconum et aliorum avium nostrorum et heredum nostrorum de deductu riparie ac officium supervisoris omnium servitiorum de custodia sive mutatione falconum austurcorum et aliarum avium, hujusmodi ipsis progenitoribus nostris et heredibus suis per quoscunque debitorum ac ripariarum in defenso existentium*" (r).

We thus see that none of the documents relating to this right of rivation, which were drawn up at a time when it was in full exercise, have any reference to, or suggestion of, any right to fish, but afford cogent evidence that the right was confined to hawking and falconry only. We find, on the other hand, all authorities of later date describing the prerogative of rivation as a right to prevent fowling and *fishing*.

That not very satisfactory authority, "The Mirror" (Ed. Selden Society, p. 178), appears to be the first to suggest that the clause in the Great Charter referred to fishing. It says: "The article against putting rivers in defence is disused, for divers rivers are now appropriated and inwarrened, and put in defence, which were open for

(o) Close Roll, 47 Edw. III. m. 10 d.

(p) Hundred Rolls.

(q) Excheq. L. T. R. Memoranda Mich. 13 Edw. III. Communia, roll 6.

(r) In Wright's "Domestic Manners," p. 309, we find "*ripatores*" described as "*hawkers*"—a man who went to the river to hunt teal with his hawk, and teased them with what is called by the river-hawkers a *tabor* (quod a *ripatoribus* vocatur *tabor*: Etal. de Dicto apud decem Scriptores, col. 666). Barguy, Grammaire de la langue d'Oïl. "Rivière"—aller en bois et en rivière, savoir de rivière, &c., pour signifier aller chasser en bois et en plaine, à l'oiseau, sur les bords d'une rivière, connaître la chasse à l'oiseau sur les bords des rivières. On forma le verbe: —Rivoier, rivoier, chasser en rivière."

fishing and fowling in the time of King Henry I." (s). This work is supposed to have been written towards the end of the reign of Edward I., or in that of Edward II. (t). Coke accepted the authority of "The Mirror" (see preface to 10 Rep.), and accordingly made his note to the sixteenth chapter of the Great Charter, "*Nullæ ripariæ defenduntur de cætero*," &c. "That is, that no *owner of the banks of rivers* shall so appropriate or keep the rivers several to him, to defend or barre others either to have passage or *fish there*, than they were used in the reign of King Henry II."; and he cites the passage in "The Mirror." It is a very odd comment. If by "rivers" Coke means tidal rivers not appropriated as several fisheries, it is clear that the *owner of the banks* could never have put them in defence; only the King could do that. If he means non-tidal rivers, the public never had the right to fish there, for the soil and the fishery of it was in the lord of the manor, the owner of the banks as part of the territory granted to him.

It is submitted that it is very doubtful whether the right of riviation had any relation to fishing at all, or whether the generally accepted theory, and now settled law (u), that Magna Charta was the statute that prevented the creation of several fisheries in tidal waters is founded on fact. It seems more probable that the several fisheries which exist had all been created long before (x).

Lord Blackburn, in *Neill v. Duke of Devonshire* (y), commenting on Lord Hale, de Jure Maris, pp. 337, 384, remarks that Lord Hale speaks in the present tense of the King having the right of fishing in tidal waters and having power to grant fisheries, and doubts whether the sixteenth chapter of Magna Charta had any effect as to preventing the putting of rivers in defence. He says: "And there seems to me considerable doubt whether the sixteenth chapter of Magna Charta did more than restrain the writ '*De defensione ripariæ*,' whereby when the King was about to come into a county all persons might be forbidden from approaching the banks of rivers whether tidal or not, that the King might have his pleasure in fowling and fishing therein, a prerogative very analogous to forest rights."

It is therefore wholly a matter of speculation as to how and in what manner fisheries in tidal waters were put in defence; and it

(s) The evidence of the existence of fisheries in Domesday Book tends to negative this statement.

(t) See the able introduction to the Selden Society's Edition and the comments there on the value of the work as an authority.

(u) *Malcolmson v. O'Lea*, (1862) 10 H. of L. Cas. 593; *Neill v. Duke of Devonshire*, (1882) 8 A. C. at p. 179.

(x) *R. v. Preston* (Ed. I.), Plac. de Quo Warranto, p. 387.

(y) (1882) 8 App. Cas. at p. 177.

may probably have been that the mere grant of the soil over which the water flowed may have been sufficient to give the exclusive right. The soil and the right of fishing and taking the profit of the soil was vested in the Crown, as part of the great waste of the kingdom, and, except where the King had annexed part of it or included it in some manor, intending to appropriate the profit of the fishery to himself, and commanding his bailiffs to collect it, he may have been well content to allow the "homines de patria" or "homines de vicinitate" to fish by his tacit license, just as in the present time the public have been allowed to take sand and seaweed upon foreshore belonging to the Crown, although they have no strict right to do so (z); the privilege for the public being at that period a mere tacit license revocable at will (like the taking of sand and seaweed). It is impossible to suppose that at this early period such a thing as what is now known as a "public right" was paramount to the King's right of ownership and limited or restrained him in anywise. There was no such thing as a "public" in the sense we now understand it. If therefore the King chose to grant a part of the soil of the tidal water by including it in the ambit of some manor granted to a subject, the right to the profit of such soil, viz., the fishing, would pass to the grantee to the exclusion of the tacit permission or liberty to fish which the King had allowed before his grant. Take the analogy of a large tract of waste land over which the people of the country had been allowed to pasture their cattle without restraint because the soil was in the King and he had not separately appropriated it, and did not care who took the profits; the men of the country, the public, could by the exercise of this pasturing get no right to it as against the King. Then when the King granted this tract to a subject in severalty the grantee could at once prevent the public from entering it or taking the profit; and it is not easy to see why the case should not be the same with a grant of waste land covered with tidal water as it would be with a grant of waste land above the high water mark. If this be the real explanation of how fisheries were put in defence it tends strongly to support the view expressed by Palles, C.B. (a), that fisheries both in tidal and non-tidal water are mere profits of the soil as affected by the King's right of excluding the public; and also strongly supports the now established presumption that the owner of a fishery is to be taken to be the owner of the soil until the contrary appears (b).

(z) *Howe v. Shawell*, (1833) 1 Ale. & Nap. 348.

(a) *Duke of Devonshire v. Neill*, (1877) 2 L. R. Ir. 132.

(b) *Parthorick v. Mason*, (1774) 2 Clutty, 258; *Att.-Gen. v. Emerson*, [1891] A. C. 649; *Hindson v. Ashbur*, [1896] 2 Ch. 1.

There is, however, an early instance of a contention that the sixteenth chapter of Magna Charta prevented rivers from being put in defence as to fishing, but there is no decision on the question.

King Henry the Third, by charter dated 28th June, 19 Henry III., A.D. 1235, had granted to Richard, Earl of Cornwall and King of the Romans, the manor and honour of Knaresborough with its appurtenances, which included the manor of Aldburgh (*Vetus burgum*) and Boroughbridge (*Pons burgi*), and he claimed that the rivers Ouse and Ure (*c*) between the city of York and the town of Ponteburg, were parcel of that manor (*sunt de pertinentiis prædicti manerii*), and he claimed toll on ships and merchandise passing along the rivers and to have them in severalty, and to prevent persons fishing without his license. The citizens of York claimed that the rivers were free to all persons to fish and to navigate. The dispute came to a head in 8 Edward I., A.D. 1280 (*d*), when the citizens of York brought a suit at the Assizes before John de Vallibus and his fellows to try the question with Edmund, Earl of Cornwall, the son and successor in title of Richard, Earl of Cornwall. The citizens alleged that the earls had usurped the waters to hold “in seperali suo,” “absque hoc,” that the citizens might fish and navigate in the said rivers. The earl claimed the rivers as part of his manor granted to his father, and claimed to have toll and to prevent fishing. Issue was joined and the verdict of twenty-four knights taken, who find that the waters of Use and Yore are not “de pertinentiis” of the manor of Knaresborough, nor of the manors of Boroughbridge nor Aldburgh, and that they never were; but that from time of memory they were free to every one of the people to fish to have free transit over them until Earl Richard usurped them “in suo seperali,” and judgment was given that the aforesaid waters should be free to all and singular of the people to fish and navigate from York to Boroughbridge and *e converso* without giving any toll, and it was forbidden on the part of the King that any one should hinder them from fishing or navigating in future, and that all and singular as well in fishing as in navigation should be free in these waters as they were before the time of Earl Richard. In those proceedings it is to be observed that there is no reference to the sixteenth chapter of Magna Charta, which would certainly have been pleaded in the case if it was thought that it had the effect of prohibiting the King from putting rivers in defence as to fishing. Whether this verdict stood or whether it was appealed in any way we know not; but it would seem that it

(c) The river from Boroughbridge to the mouth of the Nid at Nun Monkton was called the Ure, and from thence to York the Ouse.

(d) Assize Rolls, 175, m. 53; Drake's *Elboracum*, p. 199.

must have been reversed, for we find that the lord of Knaresborough within two years of the verdict still held the river in defence, and took the tolls and leased the fishery from Boroughbridge to York. He claimed the tolls by ancient custom. A minister's account of Boroughbridge for the year 32—33 Edward I., A.D. 1303—1304 (*e*), shows the receipt of 9*l.* 5*s.* for two parts of the freightage of boats carrying merchandise and divers other things from Boroughbridge to York and from York to Boroughbridge this year of ancient custom, and the "batellarius" took the other third of the freightage for his labour. Also there was received 9*l.* 2*s.* of the fines of divers men with boats carrying dung in their boats upon the waters of Yore and Use to Overton, Newton, Walfot, and other towns next the water, viz., for having license of old custom. There was also received 4*l.* 6*s.* 8*d.* from the fishery of the same water with small nets between Boroughbridge and York so let to farm this year, and 7*l.* of the fishery of the mill pond in the same water. There are similar accounts for the years 34 Edward I. and 1 Edward II., A.D. 1306—1307 (*f*).

In 21 Edward I., A.D. 1293 (*g*), a quo warranto was issued against Edmund, Earl of Cornwall, as lord of Knaresborough, as to how he claimed to have the water of Ouse and Ure between Pontesborough and York, "sibi sepeale," and that no one should fish or have transit by ship without his license. The trial was put off by writs of supersedeas, and the earl was allowed to use his liberties till the trial, which never came, and no decision was arrived at. This proceeding did not dispossess the earl, for we find ministers' accounts for 6—7 Edward II. and 7—8 Edward II., A.D. 1312 and 1314, which return the profits of the freightage of the water, boats, and the fisheries.

In 8 Edward II., A.D. 1314 (*h*), the citizens of York petitioned the King in Parliament, reciting the sixteenth chapter of Magna Charta, and stating that the rivers of Ouse and Yore were put "extra defensum," and that by Earl Richard they were put in defence, "contra tenorem Magnæ Chartæ," and so continued until after the trial in 8 Edward I. they were put extra defensum, and so remained for two years after the judgment; but that Edmund, Earl of Cornwall, had again unjustly and without judgment put them in defence again, and they pray for a remedy. The answer to the petition is that the constable of Knaresborough is to inquire as to the facts in

Min. Acc. 1085
1

Min. Acc. 1085
2 & 3

(*g*) Placita de Quo Warranto, p. 212.

(*h*) Rot. Parl. I. 395 a.

the petition and to certify Parliament, and that the citizens are to bring the record of the judgment before the King. Nothing appears to have been done, for in 15 Edward II., A.D. 1321—1322, the citizens again petition the King in Parliament in the same manner, reciting the sixteenth chapter and making the same allegations, and praying the King to grant that the rivers shall be free according to the form of the judgment of 8 Edward I. A writ was ordered to the Chancellor to bring up the record of the Eyre that the King having inspected it may do what shall seem good.

The ministers' accounts of Boroughbridge are not extant after 8 Edward II., but we find in an account of 17—18 Henry VI., A.D. 1438 (i), that the profits of the fishery were still returned, although there is no clear reference to the boat toll, the account being in an abbreviated form, giving no details, because the town and its profits were in lease.

These petitions of the citizens of York are a distinct allegation of the effect of Magna Charta, but we have no decision that this was the view taken of that enactment at the time or the construction put upon it. It clearly never referred to navigation, which was the principal matter the citizens of York complained of. It is equally clear that the fishery was not taken away from the manor of Boroughbridge and thrown open to the public. It looks very much as though the citizens referred to the charter for the purpose of giving a stronger colour to their complaint. It seems to have been an afterthought, for no mention of the charter occurs in the pleadings in the suit of 8 Edward I.; and it is to be observed that the defendant in these proceedings, in order to rebut the claim of the citizens, merely alleges that the river is parcel of his manor, as though he thought it sufficient to allege possession of the soil as giving him the exclusive right to fishing, though he was clearly wrong in supposing that it gave him the right to take tolls of shipping in restraint of navigation. The tolls appear to have been given up possibly by some charter of exemption from toll to the citizens of York, but the fishery remained to the lord of the manor. We know that the lawyers of this period were not too well versed in the construction of ancient documents. It is worthy of mention that in the time of Edward the Third the Judges of the King's Bench, when certifying an extract from Domesday Book to the King, stated that they had copied it verbatim, but that "they did not know what it meant except as the words sounded" (k). It must not therefore be too readily accepted that the allegation of the

(i) Min. Acc. $\frac{465}{7613}$.

(k) Kelham, Domesday Book Illustrated, p. 245.

citizens of York as to the effect of Magna Charta was a true statement of the law as regards putting rivers in defence, more especially since we see that they were unsuccessful in getting the rivers thrown open to public fishing, which would hardly have been the case if the interpretation they sought to put on the sixteenth chapter of the Great Charter was accurate ; though of course it may have been that the lord of the manor may have been able to show that the rivers were put in defence before the date of the charter, as probably they were. These petitions are the only records that we have found that in any way suggest that the construction now put upon the charter (*c*) was the true construction.

(1) *Malcolmson v. O'Dea*, (1862) 10 H. of L. Cas. 593.

CHAPTER III.

OF PRESUMPTIONS WITH REGARD TO FISHERIES.

IN the consideration of the evidence relating to a claim to a several fishery there is often considerable difficulty in accounting for the possession of the right and in arriving at a just conclusion as to the true legal origin of the title under which the several fishery has descended, and ascertaining whether the particular fishery in question is a fishery including the ownership of the soil or is a mere incorporeal hereditament. Lord Justice Bowen, during the argument of the case of *Duke of Devonshire v. Pattinson* (a), put the state of the case pointedly by the question, "Is it not always a question of evidence in every case, whether a several fishery carries the soil or not?"

The ascertained facts of a case not unfrequently conflict with the well-settled presumptions of law, namely, the presumption of riparian ownership of the soil, water and fishery to the mid-stream in non-tidal waters, and the presumption of ownership of the soil by the Crown in tidal waters, and also with the more modern dictum that ownership of a several fishery, whether in non-tidal or tidal waters, raises a "*prima facie*" presumption, in the absence of the evidence to the contrary, of ownership of the soil.

This question of the ownership of the soil of a fishery, which so frequently arises between the owner of a fishery and the riparian proprietors, makes it very material to ascertain, by a careful investigation of the history of the fishery, in whom the soil of the water is vested.

For a long period before and down to quite modern times, the general tendency of legal opinion has always been to regard a fishery, whether in tidal or non-tidal waters, as an incorporeal hereditament. This was no doubt largely due to the erroneous dictum of Lord Coke (Co. Lit. 4 b, 122 b), that "if a man be seized of a river and by deed do grant *seperalem piscariam* in the same, the soile doth not pass." This dictum has, however, been overruled (b).

(a) (1887) 20 Q. B. D. 265.

(b) See *Partheriche v. Mason*, (1774) 2 Chitty, 258; Lofft, 364; *Marshall v. Ulleswater*, (1863) 3 B. & S. 732; *Duke of Somerset v. Fogwell*, (1826) 5 B. & C. 875; *Holford*

As regards fisheries in tidal waters, they were, until the decision of *Att.-Gen. v. Emerson* in 1891, always deemed to be incorporeal. This no doubt was largely owing to the suggestion of Blackstone (c), that a fishery in tidal waters was always an incorporeal "free fishery" in the nature of a franchise, and also arose from the natural result of the undue weight given to the theory of the "*prima facie*" presumption of ownership of the soil of tidal waters by the Crown. This theory, by frequent assertion and iteration, has come to be considered rather as a presumption of fact than merely a presumption of law capable of being rebutted by evidence. It has, however, of late years been much shaken, and although it is a true presumption of law and a true theory, it has been demonstrated that in the great majority of cases it is not true as a presumption of fact. Although no doubt there may be fisheries in tidal waters which are incorporeal hereditaments, a careful examination of the facts in very many cases will show that such fisheries are the exception and not the rule, and that the conclusion of Chief Baron Palles in the case of *Duke of Devonshire v. Neill* (d), will be found to be a correct deduction from known facts. He says: "It appears to me to be beyond dispute that the exclusive right of fishing in tidal waters vested in the hands of the Crown is no more than an incident of the soil over which the waters flowed as affected by the exercise of the Crown's prerogative of excluding the public, and that right can and generally does exist in the subject as an incident of the soil and not as an incorporeal hereditament."

The other presumption, namely, that of riparian ownership to mid-stream, has also in the same way gradually come to be considered a presumption of fact rather than of law, and fisheries in non-tidal water have been described and dealt with as if they were always incorporeal rights, and not, as in most cases they are, profits of the soil (e). The fact that originally fisheries were, all of them, parcels of manors, separate hereditaments comprising the land and the water, has, in these later days, when manors have ceased to be the important units which in former days they were, been lost sight of. The language of Bracton and Lord Hale stating the presumption of the right of riparian ownership as being in the owner of the riparian *land* has led to an idea that the immediate ownership of the riparian land necessarily gave the right to the soil and fishery

v. Bailly, (1846) 8 Q. B. 1000; 13 Q. B. 426; *Att.-Gen. v. Emerson*, [1891] A. C. 649; *Hindson v. Ashby*, [1896] 2 Ch. 1.

(c) 2 Comm. 39. See *Rauce v. Brenton*, (1828) 8 B. & C. 737.

(d) (1877) 2 L. R. Ir. 132.

(e) See *Waterford Conservators v. Connolly*, (1889) 24 Ir. L. T. R. Ex. 7. Riparian owner is owner of the soil of half the stream and entitled to fish half the river, just as he is entitled to take game on the land portion of his property, *per* Palles, C.B.

to mid-stream; whereas in most cases the fact is that the original ownership of the *land within the manor* gave the right to the mid-stream *as parcel of the manor*, and the river within the manor (especially where the fishery has been a valuable one) has been retained by the lord of the manor, notwithstanding that he has parted with various pieces of riparian lands to his tenants. Where, therefore, there is evidence that the fishery was in its origin manorial and parcel of the manor, the true presumption of fact should be that "*prima facie*" the soil and water and fishery was parcel of the manor; and the evidence should be scrutinised to see whether the lord of the manor has remained in possession of the fishery together with the soil, or whether the riparian owner can show such evidence of exclusive user opposite his land as to raise the presumption that by the grant of the riparian land, which must have been originally made by the lord of the manor, the soil and fishery opposite it was intended to pass to the grantee, or was retained by the lord at the time of the grant.

The burden of the proof of possession and title is on the lord of the manor or the owner of the fishery claiming against the riparian proprietor (*f*), and until the decision of the case of *Duke of Devonshire v. Pattinson* in 1887 (*g*) the weight of the presumption of riparian ownership to the mid-stream made it very difficult for the fishery owner to succeed. Down to that time it had been held that by a conveyance describing the land thereby conveyed as bounded by a river, it was intended that the bed of the river to the mid-stream should pass, unless there was a distinct reservation of the river and the fishery in the conveyance itself. This presumption was held, in the case of *Duke of Devonshire v. Pattinson*, to be rebutted by evidence of possession of the fishery by the grantor at and subsequent to the date of the conveyance. It was held that the fishery within the manor was a manorial fishery, and was a separate close and hereditament, parcel of the manor and distinct from the riparian land; and that, although the grant of the riparian land was made without reservation, it was shown by the circumstances of the case that the grantor did not intend to grant any rights in the river to the grantee. This principle of construction has been followed and approved by subsequent cases.

Since this case, a further presumption of law has been established (or rather an old presumption has been reaffirmed), which favours and assists the claim of the fishery owner. It is that the possession of a several fishery raises the presumption of ownership of the soil,

(*f*) *Lamb v. Newbiggin*, (1844) 1 Car. & K. 549.

(*g*) (1887) 20 Q. B. D. 263.

whether in tidal or non-tidal waters. This presumption, in the great majority of cases, will be found to be true upon the facts. The claim of the riparian owner to fish in right of his possession of the bank rests solely on the assumption that he has had a grant of the soil of the river, and is therefore entitled to the profits of it. This is the only ground upon which he can claim it; although, of course, he may claim a right to fish from his land in the nature of a right of common of fishery, to fish concurrently with the owner of the river by grant or prescription; but if he rests his claim solely on riparian ownership, the question as to whether he can show possession of the soil becomes the important question in the case.

Seeing, therefore, that these presumptions as to fisheries conflict with one another, it has been thought that a careful consideration of the origin and nature of fisheries, and of the manner in which they came into existence and have been described and dealt with by the owners of them in past times, as shown by ancient records and decided cases, may help in determining many of the difficulties which so frequently present themselves with regard to titles to fisheries.

CHAPTER IV.

OF THE PRESUMPTION OF OWNERSHIP OF THE SOIL BY THE OWNER OF THE FISHERY.

PRESUMPTIONS of this nature, commonly described as presumptions of law, are in truth presumptions of fact—a convenient means, in the absence of actual evidence of the true facts of the case, of jumping to a conclusion as to what is probably the truth, having regard to the nature of fisheries, in the majority of cases. The presumption now established is that the owner of the fishery, whether in tidal or non-tidal water, is the owner of the soil (*a*). An examination of the general history of fisheries points strongly to the conclusion that this presumption is sound, and in accordance with the facts so far as we know them. In the first place, it is established, and has been held from the earliest times, that fishery is a profit of the soil (*b*). The owner of a fishery must either be, or must derive his right from, the owner of the soil (*c*). Originally all fisheries and the soil thereof were parcel of manors, baronies, honours, either held by (*d*) or granted out by the Crown by ambits of land comprising the site of the fishery as parcel thereof. Ancient records from Domesday downwards show us that the most ancient and usual mode of enjoying the profit of fisheries, both in tidal and non-tidal waters, was by weirs, kiddels, fishgarths, stake nets, bucks, and other engines fixed into and permanently erected in the soil of the fishery. The existence of such fixed engines was held by Lord Hale (*De Jure Maris*, cap. v.) to show that in fisheries of this kind the soil was held with the fishery. “Such are gurgites, weirs,

(*a*) *Hanbury v. Jenkins*, [1901] 2 Ch. 401; *Att.-Gen. v. Emerson*, [1891] A. C. 649; *Hindson v. Ashby*, [1896] 2 Ch. 1; *Partheriche v. Mason*, (1774) 2 Chitty, 258; Loft, 364; *Marshall v. Ulleswater*, (1863) 3 B. & S. 732; *Duke of Somerset v. Fogwell*, (1826) 5 B. & C. 875; *Holford v. Bailey*, (1846) 8 Q. B. 1000; 13 Q. B. 426.

(*b*) *Y. B. Trin.* 10 Hen. VII. pl. 1; *Neill v. Duke of Devonshire*, (1877) 2 L. R. Ir. 132.

(*c*) Opinion of Wood, B.; Chitty on Game Laws, p. 295; Blackstone, ii. 39; *Marshall v. Ulleswater*, (1863) 3 B. & S. 732; *Mayor of Carlisle v. Graham*, (1869) L. R. 4 Exch. at p. 371, per Bramwell, B.: “I think the right to grant a several fishery arises from the ownership of the soil”; *Cooper v. Phibbs*, (1867) L. R. 2 H. L. 149, Lord Cranworth.

(*d*) See case of *The Bannac*, (1610) Dav. 55.

fishing places, borachiaë, stachiaë, &c., which are the very soil itself, and so frequently agreed in our books," and, in the case of *The Abbot of St. Benet Hulme* (e), he says that the fishery "was not a bare liberty or *profit à prendre*, but the right of the very water and soil itself, for he made weirs in it." Lord Hale's dictum has been upheld by the House of Lords in the case of *Att.-Gen. v. Emerson*.

The returns on the Hundred Rolls in 7 Edward I. (f) show that many of the fisheries were fished with weirs, e.g. "*libera piscaria sua cum tribus gurgitibus*"; "*piscaria in riparia de Thames in longitudine quantum terra sua durat et duos gurgites ad eandem piscariam pertinentes*"; "*et tenet dimidiam Thamisiā in dominico*"; "*et sunt in eadem villa xxvij quarentinæ aquæ Thamisiæ in longitudine*" (g). The Abbot of Furness had a weir in the water of Ulverston "*in proprio solo ipsius Abbatis*." In non-navigable rivers weirs and fishing mill dams almost always existed. In navigable rivers they became so numerous and such a nuisance to navigation that they were ordered to be cut down by Magna Charta, and subsequent statutes set out by Hale (*De Jure Maris*, cap. v.), who observes upon them: "But in all these statutes, though they prohibit the thing, yet they do admit that there may be such an interest lodged in a subject, not only in navigable rivers, but even in the ports of the sea itself contiguous to the shore, though below the low water mark, whereby a subject may not only have a liberty but also a right or propriety of soil. But yet this, that I have said, must be taken with this allay, which I have in part premised" (h).

Commissions were frequently issued to survey navigable rivers and to restrict the weirs (i); and ultimately, under the law of sewers, 31 Henry VIII., almost all the weirs in navigable rivers were destroyed. It must, therefore, be taken as decided that in the case of a fishery worked by fixed engines, whether in tidal or non-tidal water, the fishery is held with the soil.

In the cases of fisheries which have always remained parcel of manors, it is clear that the fishery and the soil remain in unity of possession. Nothing has occurred to separate the right of fishing from the ownership of the soil. In the case of fisheries severed

(e) *De Jure Maris*, c. v.

(f) Hundred Rolls, II. pp. 691, 705, 720, 749, 776.

(g) *Coram Rege Roll*, E., 34 Edw. I. roll 10.

(h) The Statutes of Weirs, 21 Rich. II. c. 19, and 1 Hen. IV. c. 12, empowering justices to correct and remove weirs, stakes, kiddels, &c., enact that if the order of the justices be disobeyed he who has the *freehold* of those structures shall pull them down at his own cost.

(i) Ing. p. m. 20 Edw. I. 77, weirs in the Trent; Hundred Rolls, weirs in the Tyne. The Hundred Rolls show numerous presentments of weirs existing in rivers, e.g. in the Colne, I. 103; Assize Rolls, Essex, 13 Edw. I. 49 b; *Coram Rege Roll*, 229, T. 10 Edw. II. roll 83, weir at Wroxham.

from manors, but worked with fixed engines, it is clear that the soil and the fishing remain in unity of possession. In the case of fisheries severed from manors, but not worked by fixed engines, it will be a question of evidence whether the soil has or has not passed with the fishery. If the fishery owner shows user of the soil as by erecting buildings, taking ballast, cutting weeds, &c. (*k*), the case is clear. If no user by the fishery owner is shown, and no user by the grantor of the fishery or his successors in title, the presumption of ownership of the soil remains in favour of the fishery owner. If there is user of the soil adverse to the fishery owner, then that presumption will probably be rebutted.

It has been suggested that there might be such a thing as an incorporeal right of fishing including the right to make such use of the soil as was necessary to fix engines in it for the purpose of taking the profit of the fishery, rather in the nature of an easement than as evidence of the ownership of the soil. In the case of *The King v. Ellis*, in 1813 (*l*), which involved the question of the rating of a fishery in the Severn, Bayley, J., says: "I should doubt very much if the grant of a fishery could convey the soil and everything underneath it, such as all the minerals; though I can conceive that it may pass so much of the soil as is connected with the fishery"; but on evidence being given of fishing with fixed engines, he and the rest of the Court held that it was a fishery with the soil and upheld the rate. This speculation of Mr. Justice Bayley has received no confirmation, nor is there any known case which supports his suggestion. The presumption that the soil passes with the fishery stands, and the history of fisheries shows clearly that it is presumption of powerful inference, and is probably a true presumption of fact in the great majority of cases.

We have seen that the exercise of a several fishery by fixed engines, as in the case of *Att.-Gen. v. Emerson*, has been held to raise the presumption of ownership of the soil. There is another circumstance which appears equally to raise such a presumption, viz. the existence of a fishery for oysters, mussels, cockles, &c. Mussels which adhere to the soil have been held in Scotland to be *partes soli* (*m*), and in *Free Fishers of Whitstable v. Gann* (*n*), it was considered that a grant of the soil was necessary to the possession of an oyster fishery. Cockles are taken by digging in the soil.

(*k*) See *Partheriche v. Mason*, (1774) 2 Chitty, 258.

(*l*) (1813) 1 M. & S. 652.

(*m*) *Duchess of Sutherland v. Watson*, (1868) 6 Court Sess. Ca., 3rd Ser. 199; *Duke of Portland v. Gray*, (1832) 11 Court Sess. Ca., 1st Ser. 14; *Lindsay v. Robertson*, (1867) 5 *Ibid.*, 3rd Ser. 864.

(*n*) (1861) 11 C. B. N. S. 387. See *Scrutton v. Brown*, (1825) 4 B. & C. 485.

CHAPTER V.

OF THE ORIGIN AND SUBDIVISION OF FISHERIES.

THE result of a careful examination of the more ancient evidence relating to fisheries leads to the conclusion (above expressed) that in the origin of things fisheries, whether in tidal or non-tidal waters, were in their nature mere profits of the soil over which those waters flowed, the right to the fishery being dependent upon and an incident of the ownership of the soil (*a*). Fisheries, both in tidal and non-tidal waters, were originally vested in the Crown as owner of the soil of the whole kingdom. As regards tidal waters very many fisheries were before the reign of King Henry II. granted out to subjects by the Crown, while others were retained by the Crown and dealt with as parcels of manors still remaining part of the Crown estates (*b*); the right of the public to fish in such waters having been supposed to be excluded by some prerogative action of the nature of which we are ignorant. As regards non-tidal waters we see that the fisheries in them were granted by the Crown as parcel of the manors in which the waters or rivers were situate; and the soil of the river and the profit of the fishery in it was dealt with as parcel of the manor, the river being in fact a separate close and hereditament, parcel of the manor within the bounds of which it was situate; the ownership of the river by the lord of the manor not depending upon or being consequent upon his ownership of the riparian land, but being his property as land covered with water lying within the ambit of the territory granted to him by his original grant of the manor (*c*). Such being the condition of things with regard to the original ownership of fisheries in early ages, it may be useful to consider the various ways in which the Crown

(*a*) The fishery originally belongs or is primarily incident to the soil, and when it becomes a separate and distinct hereditament it is by grant from the owner of the soil: opinion of Wood, B., Chitty, Game Laws, p. 295. Blackstone, ii. 39: "He that hath a several fishery must also be, or at least derive his right from, the owner of the soil": *Marshall v. Ulleswater*, (1863) 3 B. & S. 732.

(*b*) See case of *The Bann*, (1610) Dav. 55; Moore on Foreshore, p. 247, where the Crown retained the soil and fishery, although it granted out the riparian lands.

(*c*) The Abbot of Battle claims "*libera et sepeudis piscaria*" in the waters of Wye. The verdict is "*quod tenet in sepealitatem ratione Manerii sui*," Assize Roll, 384 a, Kent, 7 Edw. II. m. 10.

Robert de Chandos claims fishery in the Wye at Foghope, "*per terras suas ex utraque*

could or might be expected to deal with its rights and in what manner the Crown's grantees have or might have dealt with theirs.

When all the land in the kingdom was in the Crown and also all the rivers there was no question of any riparian right; the right of the Crown did not depend upon the ownership of riparian land. The Crown, therefore, might make grants in many ways, and it is desirable to consider these with a view of being enabled to ascribe to the evidence in each particular case of a title to fishery, a possible or probable legal origin for such right, especially in cases where the modern evidence of user conflicts with the common presumptions of law either as against the Crown's *primâ facie* claim to the soil of tidal water, or the claim of the owners of riparian lands within the ambits of original manors. The Crown, therefore, when owner of the entire kingdom and before any riparian manors had been granted out might grant as follows:—

1. *An entire river from the source to the sea, including the soil and fishery both in the tidal and non-tidal portions of it.*

Instances of this kind of grant are few, if indeed any can now be strictly proved. The river Itchen in Hampshire was in the possession of the Bishop of Winchester from its source to the sea from before the time of King John. In 7 John, A.D. 1205 (*d*), the sheriff was ordered to view “*totum cursum aquæ [de Itchen] et piscariam inter Wintoniam et Southampton*,” and in the same state that Bishop Godfrey de Lucy had held it to deliver it to Peter de Rupibus, the succeeding bishop.

The river Arun in Sussex from its source to the sea was included in the grant of the honour and rape of Arundel made by the

parte aque.” Verdict that he holds it “*tanquam pertinentem ad Manerium suum de Foghope*,” Assize Roll, 302, Hereford, 20 Edw. I. m. 56.

Abr. Pat. 38 Edw. III. p. 1, m. 28 d. A writ to inquire whether the lord of the manor of Carleton had “*medietatem aque de Ayr infra dominium Manerii usque ad filum aque et proficuum istius aque per fines et metus ejusdem domini*.”

Y. B. 4 Hen. VI. 11 b. Case of *The Abbot of Dorchester*. Free fishery “*parcel of his manor*.”

Pat. 20 Hen. VI. m. 6; Coram Rege Roll, M. 37 Edw. III. roll 65. “*Dominus Manerii de Wystowe est dominus aque de Ouse ad medium filum*,” and the fishery is “*in solo et dominio de Wystowe in aqua predicta*.” This is in the tidal waters of the Yorkshire Ouse.

Rastall's Ent., p. 597 a. “*Dominus ville et W. habet seperalem piscariam ratione Manerii sui quod extendit ad filum aque*.”

Gibbs v. Wolliscot, (1691) 3 Salk. 291, per Holt, C. J.: “*A man may have a free fishery in his own soil, as, for instance, he may have a river in his manor*”; Skinn. 677.

The royal fishery of the Banne, (1610) Dav. p. 57. Agreed “*que chescun inland river nient navigable appartient al owners del soile ou il ad son cours*,” 28 Ass. p. 93. “*Et si tiel river courge enter 2. Mannors, et est le meare et boundarye enter aux, lun moitie del river et piscarie appient al un seignior et lanter moitie al auter et ces appiert*,” Lib. Intrat, fol. 666 (Rastall's Entries, f. 597).

(*d*) Close Roll, 7 John, m. 13, p. 52.

Conqueror to Roger de Montgomery. It came again to the Crown and was subsequently granted to William de Albini, Earl of Arundel, by King Henry II., subject of course to such grants of fisheries in it as had been made by the original grantees and their successors to various lords of manors on the banks (e).

The rivers Frome and Piddle in Dorsetshire were in early times annexed to and treated as parcel of the royal manor of Wareham. The manor was granted to the Earls of Hereford, who claimed the fishery in the river and the right of fowling in the entire rivers (f); but in 18 Edward II. the lord of the manor of Est Stoke, which lies on the river from a spot immediately above the end of the tidal influence, disputed the right of the lord of Wareham, and defending an action of trespass to the fishery, pleaded that the Frome was a river running through divers vills in the county of Dorset, and that every man having land next the said water was accustomed to fish in the same as far as his land extended, and that he, as lord of the manor of Stoke, fished in the water extending along his land as was lawful, and not in the free fishery of the lord of Wareham. The lord of Wareham did not prosecute, and let judgment go by default. There was a similar case as to the river Piddle. The result of these proceedings restricted the Wareham fishery to the tidal portion of the river.

2. *The whole of the tidal water in a river both as to soil and fishery.*

This the Crown could grant irrespective of the ownership by any subject of the riparian land, because there is no presumption of ownership to mid-stream against tidal water (g). If, however, the Crown had previously granted out riparian manors in any part of the river together with their foreshores (but excluding the fishery), such a grant, although it would pass the fishery, would not operate to pass the foreshore which had been previously granted. The river Colne in Essex is an example of such a grant. The fishery from Colchester to the sea was annexed to and part of the King's town of Colchester, and was granted with the town to the burgesses by Richard I., but in the recent case of *The Colne Fishery Company v. Chapman* (h) it was proved that the lord of the manor of St. Osyth, near the mouth of the river, had exercised acts of ownership on the foreshore for a long period, the corporation not showing any

(e) Domesday Book, fol. 23 d; Coram Rege Roll, No. 1786, T. 1657, part 2, roll 976.

(f) Coram Rege Roll, No. 259, ro. 50 d; *Ibid.*, No. 260, ro. 77; *Ibid.*, No. 261, ro. 27 d.

(g) See case of *The Bann*, [1610] Day, 55; Moore on Foreshore, p. 247.

(h) (1898) not reported.

user of the soil. The lord of St. Osyth held his manor by a grant anterior in date to the grant of the fishery, and it was decided on the construction of the evidence of user that the corporation of Colchester had the fishery over the shore but had not the soil (*i*).

The river Dart from Totnes to the mouth of the river was annexed to and parcel of the honour of Totnes. The "water of Dart" afterwards came to the Crown in the time of Edward I., and was annexed by Edward III. to the duchy of Cornwall, which now claims the soil of the river throughout. The fisheries in the river, however, belong to various manors on its banks, having probably been granted out by subinfeudation by the early lords of Totness long before the water of Dart came back into the hands of the Crown.

The river Tamar in Cornwall was parcel of the lordship of Trematon (*j*).

King Henry VIII. made a grant of the river Orwell to the corporation of Ipswich, but, the manors on the banks having been previously granted out with their foreshores and fisheries, the grant was inoperative.

3. *The whole of the fishery in the tidal water of a river without the soil.*

There is, so far as we are aware, no known example of such a grant.

4. *Part of the soil and fishery in a tidal water in gross.*

Such are grants of fisheries unconnected with manors to monasteries and corporations (*k*).

5. *Part of the fishery in a tidal water in gross without the soil.*

A very unusual and unlikely case.

6. *Part of the soil and fishery in a tidal water as parcel of a manor.*

A very usual and common case.

7. *Part of the fishery in a tidal water without the soil as appendant or appurtenant to a manor.*

An unusual thing. No such case is at present known.

8. *The fishery and soil in a non-tidal river as part of a manor.*

This is the common and usual case. The fishery generally extends to the mid-stream when the manor lies wholly on one bank of the river. When the river runs through the manor it extends to the whole stream.

9. *The fishery in the whole stream of a non-tidal river as part of a*

(*i*) The defendants admitted the right of the plaintiffs to the fishery over their soil.

(*j*) Hale de Portibus Maris, cap. iv.

(*k*) Hale de Jure Maris, cap. v. p. 385.

manor lying on one bank to the exclusion of the manor situate on the other bank.

This, though exceptional, is by no means unusual. It is an example of the "special usage" referred to by Lord Hale, which alters the common presumption. Instances of it occur in the manors of Cookham and Bray and Mapledurham on the Thames, the manor of Castle Donnington, Leicestershire, the manor of Denham, and numerous other manors on the Colne (Middlesex).

Fisheries, therefore, coming by grant from the Crown may have had their origin in any of the ways above mentioned, and in some cases the evidence will show that the fishery has remained to the present day in the original condition in which it has been granted by the Crown. But of course it does not follow that the owners of these fisheries will keep them in the condition in which they receive them from the Crown.

The owner of a fishery having obtained it from the Crown may of course deal with it as he pleases. He may subdivide it or create rights in it at will. Judging from experience of actual cases the following are the ways in which we find that fisheries have been dealt with and divided:—

1. The owner of a river, part of a large barony, when granting out manors within the barony to be held of him, frequently grants part of the river and fishery as parcel of those subinfeudated manors. For example, the upper part of the river Arun was divided in fisheries as parcel of the riparian manors subinfeudated by the lord of the honour of Arundel before the time of Domesday Book (*l*). The lord of Trematon, as owner of the water of Tamar, has granted out fisheries in that water to the owners of manors held of the honour and to the corporation of Saltash. The case is the same in the Dart, where manors formerly held of the honour of Totness have fisheries in portions of the river. Many examples of this state of things might be cited.

2. The owner of the fishery may subdivide it by grants of portions of it comprising both water and soil to one or more persons.

3. He may grant the fishery or part of it, reserving the soil, and thus create an incorporeal fishery.

4. He may grant the soil to one, and the fishery to another: a very unlikely case.

5. He may grant a right to fish in the water to one or more persons reserving a right to fish with them. This creates a common of fishery. The right granted may be a complete right

(*l*) Domesday Book, pp. 23 *et seqq.*

to fish in all lawful ways, or may be a limited right to fish with particular nets or engines, or for particular kind of fish only, or at particular days and times, or it may be limited as to quantity, or that the fish should only be taken to supply a particular household, as is usually the case where tenants of a manor have common of fishery by custom.

6. He may grant a right to fish as annexed or appurtenant to a particular tenement.

7. The lord of a manor, owning the riparian land and the river and fishery, may grant the riparian land without granting the river and fishery to mid-stream (*m*).

8. He may grant a portion of riparian land within his manor with a right to fish in common with him, either opposite the land itself or over the whole of his fishery, or he may grant the riparian land, and the bed of the river and fishery to mid-stream, and thus exclude himself from fishing in that part of the river.

9. He may grant a right in gross to fish in common with himself over the whole or part of his fishery (*n*).

10. He may grant the right to take particular kinds of fish (*e.g.* oysters) to one person, reserving the rest of the fishery to himself (*o*).

(*m*) *Duke of Devonshire v. Pattinson*, (1887) 20 Q. B. 263.

(*n*) The lord of Minster Lovell (co. Oxon.) had his whole water in defence "excepta quod Willelmus Faber de la Leye debet piscare per cartas suas in predicta aqua quando voluerit," Hundred Rolls, ii. 710.

(*o*) *Seymour v. Courtney*, (1771) 5 Burr. 2815.

CHAPTER VI.

OF THE DIFFERENT KINDS OF FISHERIES.

A GREAT controversy has raged amongst lawyers over the meaning of the words "severalis," "libera," and "communis" as applied to fisheries from the time of the Year Books, 17 Edward IV., pl. 6, and 7 Henry VII., fol. 13, down to the cases of *Holford v. Bailey* (a) and *Malcolmson v. O'Dea* (b). The cases are very numerous, lengthy, turning mostly on points of ancient pleading, and difficult to follow. It is not proposed to discuss them in this work, because it can be shown, and has been held in the House of Lords, that there is no real distinction to be drawn between the meaning of the words "free" and "several" as applied to fisheries (c). Lord Holt stated that "it had lately been adjudged that a separate fishery and free fishery are all one" (d), and Willes, J., in the case of *Malcolmson v. O'Dea* (e), summed up the controversy thus: "This is more of the confusion which the ambiguous use of the word 'free' has occasioned from as early as the Year Book, 7 Henry VII., fol. 13, down to the case of *Holford v. Bailey*, when it was clearly shown that the only substantial distinction with respect to fisheries is between an exclusive right of fishery, usually called 'several,' sometimes 'free' (used as in free warren), and a right in common with others, usually called common of fishery; sometimes 'free' (used as in free port)." The records cited in the next chapter show that Mr. Justice Willes's conclusion is correct.

(a) (1846) 13 Q. B. 426.

(b) 1862) 10 H. of L. Cas. 593.

(c) For information on this subject, see Woolryche on Waters, chap. v., and cases cited; Y. B. 17 Edw. IV. pl. 6; 18 Edw. IV. pl. 4; 7 Hen. VII. pl. 3, fol. 13 b; 10 Hen. VII. fol. 24 b, 26 b; *Alderman of London v. Hastings*, (1657) 2 Sid. 8; *Lord Fitzwallter's case*, 1674) 1 Mod. 105; *Upton v. Durskins*, (1685) 3 Mod. 97; *Gibbs v. Woolliscot*, (1691) 3 Salk. 291; Skin. 677; Holt, 323; *Smith v. Kemp*, (1692) Holt, 322; 4 Mod. 187; 2 Salk. 636; *Seymour v. Courtenay*, (1771) 5 Burr. 2845; *Holford v. Bailey*, (1846) 8 Q. B. 1000; 13 Q. B. 426; *Malcolmson v. O'Dea*, (1862) 10 H. of L. Cas. 593; *Shuttleworth v. Le Fleming*, (1865) 19 C. B. N. S. 687; *Kiamersley v. Orpe*, (1779) 1 Doug. 56; *Paget v. Milles*, (1781) 3 Doug. 43.

(d) *Gibbs v. Woolliscot*, (1691) Holt, 322.

(e) (1862) 10 H. of L. Cas. 593.

Much confusion and doubt has arisen from a singular misprint in Coke on Littleton, p. 122 a, where Lord Coke, treating on common of various kinds, says: "So a man may prescribe to have *separalem piscariam* in such a water and the owner of the soyle shall not fish there; but if he claim to have *communiam piscariæ* or *liberam piscariam*, the owner of the soyle shall fish there. And all this hath been resclved," and he cites inter Chinery and Fisher in le Com. Banke in replevin et Mich. 29—30 Elizabeth (g), inter Shirland and White in Com. Oxon, et inter Foiston et Cracherode (sic) eodem termino in Com. Essex (h). *Foiston v. Crachroode* is reported in 4 Co. Rep. 31, and is a case about estovers for a copyholder. No report of the other cases appears to exist. The dictum is, however, twice referred to in Rolle's Abridgment, which was edited by Lord Hale (i). At p. 258, under the title "Piscaria," it is stated: "Mes si home clame *communiam piscariam* vel *liberam piscariam* l'owner del soile pischera la," citing the same cases. This is evidently copied from Coke with an error as to *communiam piscariam*; but at p. 267, under the title "Prescription" No. 4, we read: "Home poet prescriber d'aver *separalem piscariam* in tiel ewe et d'excluder pur ceo le seigneur del soile Co. Lit. 122b. Mes home ne poet prescriber d'aver un common de piscary ou *liberæ piscariæ* en tiel ewe et d'excluder le owner del soile, car ceo est encontre le nature de un common of (sic) *libera piscaria* Co. Lit. 122b, et la dit que fuit resolve en bank enter *Chimney et Fishen*. Et M. 29—30 Eliz. entre White et Shirland et enter *Friston et Cratchrode* eodem termino." Here also are errors of text indeed, but it seems obvious that Coke's text is corrupt, and that the passage should read "but if he claim to have *communiam piscariæ* (common fishery), or *liberæ piscariæ* (common of free fishery), the owner of the soil shall fish there. Otherwise Coke would imply that *common of fishery* and *free fishery* are the same thing, as has been observed by Hargreave in his note on the passage Co. Lit. 122 a, note 7. Coke's original MS. is so badly written that the printer may well have blundered.

Blackstone ingeniously defines a "free fishery" as being in the nature of a royal franchise, viz., the incorporeal right of fishing in tidal waters coming into existence by grant of the Crown. He seems to have based this suggestion on the theory that the Crown is entitled to the soil of all tidal water. "To consider such right" (he proceeds) "as originally a flower of the prerogative (k), till restrained by Magna Charta, and derived by royal grant (previous to

(g) 1587—1588.

(h) 1587.

(i) Bridgman's Legal Bibliography, Ed. 1897, p. 289.

(k) See *Duke of Northumberland v. Houghton*, (1870) L. R. 5 Exch. 127.

the reign of Richard I.), to such as now claim it by prescription, and to distinguish it from a several and a common of fishery, may remove some difficulties in respect to this matter with which our books are embarrassed" (l). The suggestion is ingenious, but quite unsound and opposed to proved facts. Hale (*De Jure Maris*, cap. v.) gives instances of fisheries in tidal water described as "*separales piscariæ*," and cites them as examples of instances in which the subject may be the owner of the several fishery the soil of which is presumed to be in the Crown, and of fisheries in tidal water in which the subject owns both the fishery and the soil; and says that infinite more of this kind may be produced. He cites a record in 35 Edward I.: William Braham sued Richard Gernon and others for fishing "*in separali piscaria sua apud Braham*" (Suffolk). The defendants say the fishery "*est quoddam brachium maris et communis piscaria eorundem et aliorum et non separalis piscaria*." He also cites the case of *The Abbot of St. Benet Hulme* as to the tidal river at Wroxham, which was claimed to be a common fishery in which the abbot had appropriated to himself, "*predictam piscariam tenendo tanquam separalem*;" and had put weirs in it. On this Hale concludes that upon the record it appeared that in this case the right of the abbot to have a several fishery was not a bare right of liberty or *profit à prendre*, but *the right of the very water and soil itself, for he made weirs in it.*" He gives other instances, and especially of the existence of several fisheries in tidal waters worked by weirs, and says, "infinite more of this kind might be produced": which is quite true, for fisheries in tidal waters worked by fixed weirs and engines, as in *The Abbot of St. Benet Hulme's Case*, can be shown to exist in every tidal estuary and many parts of the coast of the kingdom. There is, so far as the authors are aware, no instance of a fishery in tidal water which is an incorporeal fishery such as Blackstone thinks should be designated a "free" fishery. The only recorded case is that of *Duke of Somerset v. Fogwell* (m), and in that case the facts were not fully before the Court, and the decision is more than doubtful (n). Moreover, it has been decided that a several fishery is not a franchise or one of the flowers in the garland of the Crown, as supposed by Blackstone (o).

Woolrych, *Law of Waters*, p. 110, divides fisheries into four classes over and above the common or public fishery in the sea, viz.:—

1. Several fishery.
2. Free fishery.

l) 2 Comm. 39, 40.

(m) (1826) 5 B. & C. 875.

n) See post: *Att.-Gen. v. Emerson*, [1891] A. C. 648, per Lord Herschell.

o) *Duke of Northumberland v. Houlden*, 1870 L. R. 5 Exch. 127.

3. Common of fishery.

4. Fishery in gross.

The last-named, fishery in gross, he says, may be more properly referred to several fishery or common of fishery; for, if it be granted to a person exclusively of others, what is it but a several fishery, and if in common with other individuals, how does it differ from a common in gross? Therefore there remain only the "several," "free," and "common of fishery." Now it would appear that "several" and "free" are all one, so that this classification is reduced to two classes, which comprehend all the others, viz.—(1) Exclusive fisheries; (2) Fisheries not exclusive, usually called commons of fishery.

1. EXCLUSIVE FISHERIES are those in which one has the sole and exclusive right of fishing, either by reason of the ownership of the soil and its profits, or because the right of fishing is derived from the owner of the soil (*p*). These fisheries, in both tidal and non-tidal waters, are sometimes described as "several" and sometimes as "free."

Exclusive fisheries may be of two kinds—corporeal or incorporeal.

Corporeal, or, as they have been termed, *territorial* fisheries, comprise both the soil and the profit of the soil, viz., the fishing. Such are—(a) fisheries worked by fixed engines, as weirs, kiddles, stake nets, bucks, &c.; (b) fisheries in the hands of the lords of manors of which they were originally parcel, or in the hands of grantees of the lords of manors when they have been granted out as entire fisheries comprising the soil and the fishing; (c) fisheries in gross granted by the Crown to monasteries, corporations, &c. Corporeal fisheries may be held in gross, or by copy of Court roll, or as parcel of a manor.

Incorporeal fisheries are those which have been granted without the soil thereunder. These may have been created by grant of the Crown in the nature of a franchise (if any such exist), or by grants by the lords of manors or owners of the soil and fishing thereon, with a reservation of the soil to the grantors. Incorporeal fisheries may be held either in gross or as appurtenant to a manor or particular tenement.

2. FISHERIES NOT EXCLUSIVE, OR COMMONS OF FISHERY, are of two kinds, viz., "common fishery" or common of fishery. "Common fishery" is the right of the public to fish in tidal waters not appropriated as exclusive fisheries. "Common of fishery" is—(a) where the owners of the exclusive right in two halves of a river fish in

p) For the meaning of "exclusive," see judgment of Lord Mansfield in *Seymour v. Courtney*, (1771) 5 Burr. 2813, where the owner of a several fishery had granted the right to fish for a particular kind of fish without destroying his several fishery.

common between themselves over the whole river, each being owners of the soil of the river to the mid-stream ; or (b) where a right to fish in the water has been granted by the owner of the exclusive fishery to one or more persons who fish in common with him, either all over the extent of the water, or over particular parts of it.

This classification of fisheries is confirmed by the judgment of Willes, J., in *Malcolmson v. O'Dea* (q).

With a view of throwing light upon this part of our subject, we will call attention to the description of fisheries found in ancient records.

(q 1862) 10 H. of L. Cas. 594.

CHAPTER VII.

OF THE VARIOUS DESCRIPTIONS OF FISHERIES IN ANCIENT RECORDS.

IN the time of Bracton the term "several fishery" appears to have been used to indicate a fishery owned exclusively by one person, in which no other had any right to fish in common. See the case in Bracton's Note Book, Case 835, where, in A.D. 1274, an abbot sues the servants of Earl Bigod for fishing in his fishery between Weybridge and Frogeham Bridge, in Norfolk, in the parish of Acle, and says that his church was seized since the Conquest, "*sicut de piscaria quæ semper fuit separabilis ipsius ecclesiæ suæ.*" The earl says, "*quod piscaria illa non est separabile ipsius abbatis sed dicit quod terra sua abuttat super aquam et piscariam illam et quod ipse piscari debet in eadem piscaria cum ipso abbate,*" and that he and his ancestors have done so. The abbot rejoins, "*quod piscaria illa fuit separabile suum sine communia vel piscatione,*" and on this issue is joined. Here we find the riparian owner claiming not (as is usually the case in these days) a fishery in the water to mid-stream opposite his land, but a common right over the water. There are many instances of this in early records.

In 13 Edward I., A.D. 1285 (*a*), John de Pateshull brings an assize of novel disseisin against Reginald de Hotoft and Amabilia his wife, and John de Roseles and Beatrice his wife, claiming common of fishery in Magna Hayford and Parva Hayford (Northampton), from the corner of the said John's garden to the mill of Little Hayford. The defendants say, "*quod solum ex una parte dictæ aquæ est separale prædicti Reginaldi et Amabiliæ, et solum ex altera parte prædictæ aquæ est separale ipsius Johannis et Beatricis; absque hoc quod prædictus Johannes de Pateshull aliquem comuniam habet in eodem solo,*" and say that Pateshull was not seized "*de comunia piscandi in prædicta aqua tanquam pertinentem ad liberum teneamentum suum.*" But the jury found for Pateshull, who is evidently claiming common of fishery as against riparian owners.

In 8 Edward II., A.D. 1315 (*b*), Agnes of Great Cressingham claimed common of fishery in Langeford (Norfolk), pertaining to her free tenement in Langford from Langford Mill to Buckenham Weir.

(*a*) Assize Roll, No. 620, roll 20, *Pateshull v. Hotoft*.

(*b*) Assize Roll, No. 593, roll 28 d, *Cressingham's Case*.

The defendants say that she has nothing in the said vill to which any fishery pertains except a messuage and three acres of land, and that she has the fishery "per factum speciale," and not as pertaining to her free tenement. The result does not appear.

In 26 Henry III., A.D. 1241 (c), Oliver de Isenny sued William de Albini "quod permittat cum habere communiam piscarie in aqua de Stapelford," of which his father was seized as pertaining to his free tenement, and claims that he ought to fish in the water of Stapelford, "a quodam loco Stirkelan usque ad piscariam Willelmi Cusyn a terra sua de Stapelford usque ad filum ejusdem aque," and that Oliver does not permit him to do so. Oliver defends and says he only claims the fishery through his wife, whose land he holds in the vill of Stapelford, to which land the fishery pertains; and denies that the plaintiff's father was seized. Issue is joined and the jury find that the plaintiff's father died seized of the common of fishery in the water of Stapelford, "quantum terra sua duxerat usque ad filum predictæ aque," and the plaintiff recovers. Here again we find a riparian fishery described as a common of fishery. It is claimed to extend to the mid-stream, but it is found to be a common of fishery and not exclusive to the riparian owner.

In 32 Henry III., A.D. 1248 (d), Simon de Norwich sued Simon de Brunebi for common of fishery "in aqua de Lavenden," which he claims to have "ut suum separale," and succeeds.

In 37 Henry III., A.D. 1253 (e), Nicholas de Emberlin sues Hugh le Pesur and others for fishing "in libera piscaria ipsius Nicholai de Emberlin." The defendants admit that they fished there, "ut in piscaria illa ubi antecessores et ipsi solebant ut in communi piscaria pertinente ad tenementum suum et non in propria piscaria et libera ipsius Nicholai." Here we find "libera" used in the same sense as "separalis."

The return to the great commission of inquiry as to royal franchises usurped and wrongs done which was issued by King Edward I. in the second year of his reign, and which is known as the "Hundred Rolls," contains many references to fisheries. The articles which were administered to the jurors of the hundreds throughout the kingdom do not direct any specific inquiry as to fisheries, but the jurors are directed to inquire (*inter alia*) of all purprestures whatsoever made upon the King or the royal dignity, and by whom they were made and how and from what time, and in the answer to this article we find many references to fisheries. In

(c) Assize Roll, No. 37, m. 18, Lincoln, *Isenny v. Albini*.

(d) Assize Roll, No. 56, m. 5, Bucks.

(e) Curia Regis, Roll. No. 150, m. 19, Bucks.

one case the article was "concerning purprestures made upon the King, 'sive in terra, sive in aqua, sive in mari, sive in portu.'" Amongst other matters the jurors were to inquire who claimed to have free warren and whether any have exceeded the bounds of such liberties. We find in the returns made by the jurors numerous presentments that inland waters used to be common to the men of the vill to fish there, and complaints that the lords of manors have put them in defence; the fact, no doubt, being that the tenants had been permitted to fish and that the license had been withdrawn. We find also that a notion extensively prevailed in their minds that fisheries were claimed in severalty by virtue of the franchise of free warren, and they seem to have regarded the word "*libera piscaria*" as meaning exclusive fishery in the same sense that "*libera*" means the exclusive right of sporting in "*libera waremma*." They also contain many allegations that fisheries were formerly common to the men of the vill in non-tidal waters and also common to all in tidal waters.

The jurors of the hundred of Seggelawe (*f*) present that William de Bello Campo and Ida his wife "*appropriaverunt sibi aquam de Lovente in suo separali ubi homines de Newport solebant communicare*." The jurors of Newport Pagnel say that they made a warren in the common field of Newport where none was before. Also that they have appropriated the fishery of the water.

The jurors of St. Albans (*g*) complain that the abbot does not allow the burgesses to fish in the water of Halliwell as they were accustomed to do from time immemorial.

The Leicestershire jurors (*h*) say that the Master of the Temple has "*libera piscaria*" in Huchebrok and Sora since the battle of Evesham, which formerly was common; that Philip Burnel and Robert de Hanstide "*habent defensum in aqua de Sora juxta Kedgworth from Becles Ford to Radclive*," which used to be common; that the abbot of Leicester appropriated to himself the fishery of the Sore between Leicester and Belgrave since the battle of Evesham, which used to be common. The heirs of Roger de Somery claim warren in the river Sore from Munsorvell Bridge to Barewe Bridge; John de Velers at Brokesby, "*tam in terris quam in aquis in aqua de Wretheck*"; Amabel de Segrave at Danby, the heir of Eustace de Folevill at Esseby, the Earl of Lincoln at Donnington, Robert de Tatishale at Bredon, claim to have warren, "*tam in terris quam in aquis*." Roger le Strange (*i*) appropriates to himself warren at Merston, "*et defensum in aqua de Wreyke*,"

(*f*) H. R. I. 40, Bucks.

(*g*) H. R. I. 191, Hertf.

(*h*) H. R. I. 238.

(*i*) *Ibid.*, p. 240.

eight years past, and Agnes de Vesey "tenet defensum in eadem aqua."

The Lincolnshire jurors (*k*) state that the prior of Spalding "habet piscariam ripe Spalding sibi appropriatam," and lets the water of the river and sand towards the sea from Wodelode to Weston gutter for 5s. 6d. per annum. The prior proves his title by prescription, and it is allowed.

The abbot of Revesby (*l*) claims to have "libera piscaria" in the water of Bayn "ubi omnes homines de patria solebant piscare et communicare" from Kirby to Folesby Mill, by what warrant the jurors know not. Here "libera" is used to mean exclusive.

Queen Eleanor (*m*) has "libera piscaria in aqua de Wyma apud Bennington ubi omnes liberi solebant piscare ad damnum villæ per annum xs." Hugh de Buscy claims to have "waremann et liberam piscariam apud Hacham."

The prior of Novo Loco (*n*) extra Stamford appropriates "liberam piscariam in aqua que vocatur Was de Weland" from Smalesbridge to the water of Welland, by what warrant the jurors know not, to the damage of the town of Stamford, "quia tota communitas ville in eadem aqua omnibus temporibus libere piscare solebat." Another similar presentment says, "quia prædicta aqua solet esse libera et communis piscaria totius villæ."

Robert de Brewes (*o*), "appropriat sibi piscariam in regali aqua et communi de Trent from Reddescluf to Thorstanflet," the jurors know not by what warrant.

The jurors of the county of Norfolk make several complaints of the appropriation of several fisheries in waters which used to be common. The prior of Norwich (*p*) "facit sibi separalem aquam in Attleburg," also at Taverham "quod debet esse communis aqua domini Regis." The bailiffs of Cossey in the water called Hold Lea do the same. The abbot of Hulme "appropriat aquam de Wroxham sibi separabilem que solebat esse communis aqua domini Regis." The abbot of Hulme (*q*) made a purpresture "in communi ripa domini Regis" between Wroxham Bridge and Gabbard's Ferry, "clamans dictam aquam separalem piscariam suam et non permittit alium in eadem piscare ad magnum dampnum totius patriæ cum dicta aqua sit cuidam communis et esse debet ratione dignitatis domini Regis ejus semper flumen erat." The abbot established his right. See Hale *De Jure Maris*, cap. v. The

(*k*) H. R. I. 272 and 384.

(*l*) *Ibid.*, pp. 360 and 401.

(*m*) *Ibid.*, pp. 331 and 386.

(*n*) *Ibid.*, pp. 351, 354, 401.

(*o*) H. R. I. 363, Lincoln.

(*p*) *Ibid.*, I. 450.

(*q*) *Ibid.*, p. 504

prioress of Carhowe (*r*) “facit aquam de Wroxham sibi separabilem” from Wroxham Bridge to Wymenhewe. The abbess of Caen “facit quandam aquam inter Nesford et Crosthweyt sibi separabilem que solet esse communis aqua domini Regis.” The prior of St. Faith “facit unum stagnum sibi separabilem in communi pastura et in itinere domini Regis.” Here the jurors seem to have thought a roadside pond was the subject of public right.

William de Ershe (*s*) “appropriat sibi quandam aquam ut suam separale cum sit communis” from Careckford to the bridge of Philip le Brum to the damage of all the country.

Oliver de Ingham (*t*) exceeds his warren by distraining persons who take birds on the highway, and the same Oliver “*in wareнна prædicta* appropriat sibi piscariam in Hellepol que solet esse communis et eam ponit in defenso.” Here the jurors clearly attribute the putting the fishery in defence to the right of warren.

Appropriations of waters into several fisheries are presented by divers lords of manors (*u*) on the river from Thachamsond to Ludham Mill on the river Trowse, at Shotesham and Dunston and the water of Wabbe, at Martham and in the water of Waveneye.

The Northamptonshire jurors (*x*) seem to closely connect free fishery with the right to free warren. They present that the Earl of Lincoln at Birkley, the Countess of Albemarle at Naseby, Alan fitz Roald at Cotes next Guildsborough, the abbot of Seleby at Stamford, all claim and have warren and free fishery, they know not by what warrant. They also say that Simon, son of Simon de Bricklesworth (*y*), “appropriat sibi *liberam et separalem* piscariam in quadam dimidio aquæ inter campos de Bricklesworth and Multon” and Constance de Nevill in the same manner in the water between the fields of Brampton and Bucketon, which used to be common. At Nashburgh Peter de la Mara and Joan Wake appropriate “*liberam piscariam*” in the Welland from Lemne Mill to Walerand Hall. Here we see “*libera*” and “*separalis*” used to mean the same thing, an exclusive fishery.

The Nottinghamshire jurors (*z*) make many presentments of the appropriation of several fisheries, which they say used to be common.

The Suffolk jurors (*a*) appeared to have regarded fishery as a liberty of the same nature as free warren. They present that Michael Fitzwalter and Walter his son “appropriant sibi quandam *warennam* in *piscaria communi* quod pertinet ad Subyry”; that

(*r*) H. R. 450, 513.

(*s*) *Ibid.*, p. 513.

(*t*) *Ibid.*, p. 528.

(*u*) *Ibid.*, 528 to 537, 540, 541.

(*x*) *Ibid.*, II. 7.

(*y*) *Ibid.*, p. 13.

(*z*) *Ibid.*, II. 302, 319.

(*a*) *Ibid.*, II. 178—198.

Jordan de Sakevill (*b*) has warren in the vill of Marlesford and "appropriavit sibi warennam in aqua inter Eston and Letheringham"; that Roger de Colwell has warren in Carleton, and that he raised a weir in the water called Wiefleet, "*et appropriavit sibi libertatem sine warranto.*"

The jurors of the vill of Beccles (*c*) present that John Bygod "*fecit purpresturam appropriando sibi regalem ripam et piscariam ejusdem que est brachium maris.*"

The Warwickshire jurors (*d*) clearly connect the right of fishery with the franchise of free warren. They present that Theobald de Verdon has warren "*et appropriat sibi ultra metas dictæ warennæ warennam in terra prioris de Coventre et abbatis de Cumba et per hoc attrahit sibi totam piscariam ex una parte aquæ de Bretford usque ad Mervinesmilne que solebat esse communis.*" We find this presented again in 7 Edward I. (*e*) in the following form: "*Brandan. Theobald de Verdon habet ibidem warennam per cartam Henrici Regis patris Regis nunc et per cartam appropriat sibi warennam super terram prioris de Coventre et abbatis de Cumba et per illam warennam vetuit piscariam omnibus vicinis patriæ ex una parte de Avon a villa de Bretford usque ad Mervinesmilne.*" He is also presented for appropriating the fishery in the Avon on one side from Marston Mill to Bretford Bridge. He was challenged by *quo warranto* in 14 Edward I. (*f*) for the franchise of warren in those places, but not for the fishery, whence it would appear that fishery was not deemed a matter of franchise. He claims by prescription and succeeds.

Thomas de Ondesover (*g*), the lord of Bathkynton, is presented that he has warren "*sine warranto et appropriat sibi piscariam de Avon ex una parte a ponte de Frintford usque ad divisam de Stanlee et piscariam de Sowe ex una parte a terra prioris de Coventre usque ad parcum de Bathkynton sine warranto.*" In 14 Edward I. (*h*) he is challenged by *quo warranto* for the warren and other liberties which he successfully claims by prescription, but there is no proceeding for the fishery.

It was evidently a common notion that a right of several fishery was part of the right to free warren. The jurors of the inquisition taken in 31 Edward I. to inquire what evil doers broke the warren and fishery of the lady of Skaldingthorp, state that they "*quod piscaverunt aquas ex utraque parte villæ de Skaldingthorp quas predicta Domina clamat warennam suam contra voluntatem Domine*" (*i*).

(*b*) H. R. II. p. 188.

(*c*) *Ibid.*, II. p. 192.

(*d*) *Ibid.*, II. 225.

(*e*) Exch. Misc. Books, No. 15, f. 11.

(*f*) Plac. de Quo Warranto, p. 780.

(*g*) Exch. Misc. Books, vol. 15, f. 11.

(*h*) Plac. de Quo Warranto, p. 784.

(*i*) Inq. p. m. 31 Edw. I. 45.

In 7 Edward I., A.D. 1279 (*k*), the King issued a commission for an elaborate survey to be taken of the estates of the Crown and of all other persons, with full particulars of the property held by the Crown and its tenants *in capite* and their undertenants. The inquisitions returned to this commission make surveys of the counties, and set out the profits of all manors in them, with full particulars of all lands and liberties claimed in each of them, and also give the extent and nature of all the fisheries then in existence. There appears to have been a special article of inquiry as to who have "*piscariam communam aut separabilem in aquis vel ripariis Domini Regis*," thus distinguishing fisheries as of two kinds, viz., "several" fishery and common of fishery. Unfortunately, only a few of these inquisitions are in existence, viz., for parts of the counties of Bedford, Buckingham, Cambridge, Huntingdon and Oxford. These have been printed by the Record Commission in the second volume of the Hundred Rolls. There also exists a copy of the Warwickshire inquisitions in MS. If the whole of these inquisitions had survived we should have had a complete survey of every fishery in the kingdom which was in existence at the time. The inquisitions which do exist show clearly that at this period fisheries, at any rate in non-tidal waters, were almost always manorial fisheries, extents of water lying within the ambit of the manor and belonging to the lord of the manor by virtue of the soil lying within its ambit. This, there can be no doubt, was the general condition of fisheries in inland rivers, although in a few places the lords of the manors had made grants of the fisheries in gross to individuals or monastic bodies or had subinfeudated portions of their manorial fisheries to their tenants, and had in many cases granted rights of common of fishery to tenants as appurtenant to their holdings both freehold and copyhold. For the most part, however, this valuable property in a manor, its fishery, was held in hand by the lord or let at rents. It would seem, therefore, that when Lord Hale (*De Jure Maris*, cap. i.) states that "fresh rivers do of common right belong to the owners of the soil adjacent, and that if a man be owner of the *land* on both sides in common presumption he is owner of the whole river, and hath the right of fishing according to the extent of his land in length," he must be taken to mean *primâ facie* by owner of the *soil* or owner of the *land*, the owner of the *manor* and the land within it.

The inquisitions for Bedfordshire only refer to a small portion of the county, which includes the manors bordering on the river Ouse from Turvey, on the borders of Buckinghamshire, to Biddenham, near Bedford. They set out under the head of each manor the

extent and bounds of each fishery in the river belonging to each lord of the manor on either bank, and they show how the river was occupied by manorial fisheries throughout its course. When the particular fishery belongs wholly to the lord of a manor, it is described as "*piscaria separabilis*"; when it is a half-stream fishery it is described as "*piscaria in communi cum aliis Dominis*." The lord of Little Odell has "*piscaria in communi cum Waltero de Trailby*" (the lord of the manor of Chadlington, on the other bank) from Harrold Mill to Great Odell Mill. The lord of the manor of Pavingham has "*piscaria in aqua de Ouse a sepe de Radwelle usque ad molendinum de Pabenham in communi cum aliis Dominis diversorum feodorum illius ville*." It would seem that when lords of manors on either side each owned the fishery to mid-stream, they fished in common, and their fisheries are described as "*piscariæ in communi*," *i.e.* common of free or common of several fishery.

The inquisitions for Buckinghamshire (*l*) describe several manorial fisheries. William de Bello Campo, Earl of Warwick, holds "*totum manerium de Hampslap. Item dictus comes habet ibi liberam piscariam usque ad filum aquæ*." The lord of the manor of Stoke Goldington has "*libera piscaria usque ad filum aquæ*." The lord of Snelliston holds the whole manor, and has "*libera piscaria*." Here we have the word "*libera*" used in the return to an inquiry directed to ascertain who have "*separalis piscaria*."

The inquisitions for Cambridgeshire and Huntingdonshire return numerous several fisheries as belonging to manors. In the Oxfordshire returns, fifty-seven fisheries are described as belonging to the manors on the banks of rivers within the county, but in these returns the fisheries are all described as "*liberæ piscariæ*." The word "*separalis*," used in the articles of inquiry, does not occur. Many of these fisheries were fished by weirs, and must, therefore, be taken to be fisheries with the soil; yet they are called "*liberæ piscariæ*," and the theory so often set up that a free fishery is a fishery without the soil would seem to have no foundation. The lord of Chemenye (*m*) has "*liberam piscariam cum tribus gurgitibus per Thamisiam*." Roger Doyle, the lord of the manor of Bampton Doyle (*n*), has "*liberam piscariam cum tribus gurgitibus*." The lord of Sybford (*o*) has one weir on the Thames and free fishery. The lord of Chibenhurst "*habet in eadem villa piscariam in ripa de Thame in longitudine quantum terra sua durat et duos gurgites ad eandem piscariam pertinentes*." The lord of Hedindon (*p*) has a fishery in

(*l*) H. R. II. 343.

(*m*) *Ibid.*, II. 705.

(*n*) *Ibid.*, 691.

(*o*) *Ibid.*, 701.

(*p*) *Ibid.*, 710.

the Cherwell "pertaining to the manor." The lord of Wood Eaton has a fishery in the Cherwell "que ea extendit ad longitudinem dicti manerii." The lord of Minster Lovell has "totam aquam quamdiu terra sua durat in defenso per totum annum et medietatem totius aquæ que est in ripa de Wenrise a portu de Wolmeresham usque ad villam de Minster cum Ricardo de Cornwall, excepto quod Willelmus Faber de la Leye debet piscare per cartas suas in prædicta aqua quando voluerit." The lady of Whitchurch "habet in eadem villa xxxvij quarentenas aquæ Thamisiæ in longitudine de quibus dominus habet liberam piscariam ultra Thamisiam per xxv quarentenas et *communiam liberam piscariam* per xvj quarentenas." The lord of Newenham has "libera piscaria ultra Thamisiam in longitudine per ij quarentenas." The lord of Goring has "libera piscaria ultra Thamisiam in longitudine per iij quarentenas." The lord of Gathampton has "libera piscaria ultra Thamisiam per iiij quarentenas." The lord of Mapledurham has "libera piscaria ultra Thamisiam per longitudine j quarentenum." This fishery and those described as "ultra Thamisiam" include the whole stream (*q*). The lord of Stoke Parva has "libera piscaria in Thamisia usque ad medietatem aquæ et in longitudine per ij quarentenas." The lord of Somerton has "piscariam in defenso in riparia de Cherwell de Gambonesbrugge usque ad Heyford warren." The lord of North Aston has "libera piscaria in Cherwell per quantum terra sua durat." The lord of Coges has "dimidiam liberam piscariam in riparia de Wanewicke qui continuit in longitudine de curia de Coges usque ad molendinum." The lord of Northleye and his free tenants have free fishery.

An examination of these returns with the map shows that all the rivers in Oxfordshire were occupied by manorial fisheries, which were territorial fisheries, or fisheries with the soil. They are exclusive fisheries, and we see that a half-stream fishery is sometimes described as a fishery in common, as in the Bedfordshire inquisitions, and sometimes as a fishery to the mid-stream. These fisheries are all several fisheries arising from ownership of the soil of the water within the boundary of the manor, and are in no sense incorporeal rights, although they are described as "*liberæ piscariæ*." So far as records exist down to this period it is abundantly clear that the word "libera," as applied to a fishery, is the precise equivalent of "separalis," that is, "exclusive," and that these words are used indifferently to indicate the same thing, viz., a territorial and exclusive fishery owned by one lord. The expression "*piscaria in communi*," or "*communiam piscariam*," used to express the common

(*q*) *Blount v. Laquard*, [1892] 2 Ch. 681.

fishery exercised by the owners of two halves of a river, merely indicates the convenient practice of fishing in common over the whole river in respect of each lord's right to exclusively fish his own half.

Of the indifferent Use of the Words "free" and "several."

Further examples of the indifferent use of the words "libera" and "separalis" occur in the following records:—

In 26 Henry III., A.D. 1241—1242 (*r*), the prior of Goring sues in trespass to his "libera piscaria," and declares that the defendant fished "in quadam piscaria sua que est suum separale."

In 8 Edward I., A.D. 1280 (*s*), Roger de Leyecester sues Isabel de Tarefield for coming "*ad liberam et separalem piscariam predicti Rogeri in Swaffham*," and taking fish.

The jurors of the Hundred Rolls (*t*) present that the lords of Brixworth manor "*appropriavit sibi liberam et separalem piscariam in dimidio aque inter campos de Brixworth and Multon que solebant esse communis*."

In 34 Henry III., A.D. 1250 (*u*), Avelina le Mariscall and others were sued by Robert de Kokefeud and Alice his wife, and Adam de Kokefeud and Isabel his wife, for fishing in *libera piscaria ipsorum* in Estondeham (Norfolk). The plaintiffs complain that the defendants fished in *quadam aquam in predicta villa que est libera piscaria ipsius Roberti et aliorum e suum separale, ubi nec predicta Arclina nec aliquis alius aliquam habet communiam piscandi* from Hokering Mill to Gladwere Mill. The defendants say they fished in *communis piscarie sue*, and their ancestors before them. The plaintiff rejoins that the water is his *separale*, and was his ancestors'. The jury find for the common of fishery, and the defendant is dismissed. This is an example of the use of the words "libera" and "separalis" as meaning exclusive, as distinguished from "communis piscaria."

In 45 Henry III., A.D. 1261 (*v*), Walter de Murreve and another claim by prescription a right to fish in the water of Nene at Thorp (Northamptonshire) against Reginald de Waterville, who claimed that he and his ancestors held the fishery "*liberam et separalem*," and the jury find for him, and that Walter and the other had no right to fish there.

(*r*) Assize Roll, No. 37, Berkshire, 26 Hen. III. m. 6.

(*s*) De Banco, No. 36, m. 8—9, Edw. I. r. 86, Cambridge.

(*t*) H. R. II. 13.

(*u*) Assize Rolls, No. 569, 34 Hen. III. m. 24.

(*v*) Assize Rolls, No. 616, roll 18 d.

In 4 Edward I., A.D. 1276 (*y*), a defendant, sued by the owner of the several fishery in Ousthorp and Iwardeby (Lincoln), pleads “quod piscaria non est separalis immo communis,” but the jury find it “separalis.”

In 9 Edward I., A.D. 1280 (*z*), William de Ros and Eustachia his wife claim that the fishery in the water of Segholm, in the vill of Reppinghale (Lincoln), is “separalis piscaria ipsorum ita quod nullus in ea potest piscare sine licentia eorum et voluntate,” but the jury find that it is “communis ad communitatem totius villæ de Reppinghale.”

In 9 Edward I., A.D. 1281 (*a*), William le Graunt sues Walter Malby and others for fishing “in liberis piscariis suis.” The defendants say that they did not fish “in libera piscaria ipsius Willelmi set in communi piscaria ipsorum Walteri et aliorum”; thus setting up the common fishery belonging to many against the “libera” or exclusive, *i.e.* several, fishery belonging to one.

Again, we have the following case (*b*), in which the dispute is precisely similar, but the fishery is described not as “libera,” but as “separalis.” In 35 Edward I., the prior of Tickford sued Robert de Lodington and others for trespass “in separali piscaria ipsius prioris apud Caldecote.” The defendants say they ought to have “communiam piscariam usque ad filum aquæ de Caldecote ubi tenementa sua extendunt super eandem aquam per quod ipsi ibidem piscati fuerunt tanquam in communia piscaria sua.” One of the defendants claims several fishery opposite his tenement. The prior replies that the water is “separalis piscaria sua et non communis piscariæ”; thus setting up “separalis” as against a claim to “communis piscariæ.” The prior succeeded.

In 20 Edward I. (*c*), a writ of *quo warranto* against the corporation of Preston (above referred to) challenges them for claiming *libera piscaria* in the Ribble. The corporation say they hold the fishery in common with the Earl of Lancaster, the owner of the manor on the other bank of the river, but the King’s attorney replies that the corporation and the earl know the division between these fisheries, and that the Preston side of the river “est separalis piscaria hominum de Preston,” and the other half is the earl’s.

In 4 Edward I., A.D. 1276 (*d*), Joan de Huntingfeld sued Thomas Vygerous and others for fishing in her “libera et separalis piscaria in aqua de Hatfeld Peverel.”

(*y*) Assize Roll, 483, m. 4.

(*z*) *Ibid.*, m. 66 d.

(*a*) Curia Regis Roll, No. 64, roll 40, Bucks.

(*b*) Coram Rege, No. 188, m. 1 d; No. 189, m. 69 d, Bucks.

(*c*) Plac. de Quo Warranto, p. 387.

(*d*) De Banco, No. 17, roll 128, Essex.

In 13 Edward I., A.D. 1285 (*c*), Joan de Huntingfeld was presented at the Eyre for not permitting any one to fish "in riparia de Hatfeld Peverel sicut solebant." She appears and says "quod ipsa tenet prædictam piscariam in separabili et quod non pertinet ad aliquem ibi piscare sine licencia sua et voluntate." The jury find that "prædicta piscaria est suum separale."

In 32 Henry III., A.D. 1248 (*f*), Robert de Fuleham sued Andrew le Blund and others for fishing "in libera piscaria ipsius Roberti de Ginges Joybert." Robert complains "quod cum habeat liberam piscariam in prædicta aqua de Ginges Joybert ita quod nullus potest piscari in eadem sine licentia et voluntate ipsius Roberti ubi ipse habet terram ex utraque parte ejusdem aque," the said Andrew and the others fished. Andrew defends, and says that Robert "nullam ita liberam piscariam habet in prædicta riparia quominus quodcumque voluerit in prædicta riparia poterit piscari," and says that he, Andrew, is the chief lord of the vill, and long before Robert had any land there he used to fish. The parties subsequently came to an agreement. Here we have the riparian owner claiming against the lord of the manor "libera piscaria," which must mean a fishery with the soil, and must also mean an exclusive or several fishery.

In 7 Edward II., A.D. 1313 (*g*), the abbot of Battle was presented in Eyre for claiming *liberam et separalem piscariam* in the river Wye, in Kent. He pleads that the Conqueror granted the manor of Wye "cum omnibus appendiciis suis," to his abbey, and that he and his predecessors since then had held "prædictam piscariam in riparia prædicta in separalitate, absque hoc quod aliquis ibidem piscari debet sine licencia ipsius abbatis vel predecessorum suorum." The jury find that the abbots held "prædictam piscariam in riparia prædicta in separalitate a tempore prædicte ratione manerii sui."

In 39 Henry III., A.D. 1255 (*h*), John de Shelford was summoned to answer Symon le Peschur of a plea "quod permittat ipsius Symonem habere *liberam piscariam* in aqua de Rickmansworth (Herts). Et dicit quod ipsemet fuit in seysina de prædicta piscaria in separali suo ut de feodo et jure tempore Domini Regis nunc capiendo unde expletias," &c. They came to an agreement by which Symon let the fishery to John for life at a rent of 3s. and four sticks of eels.

In 7 Edward III., A.D. 1333 (*i*), William Bayns sued William, son

(*c*) Assize Roll, No. 242, m. 85.

(*f*) Assize Roll, No. 231, Essex, m. 12.

(*g*) Assize Roll, No. 384 a, m. 10.

(*h*) Assize Roll, No. 320, m. 18 d.

(*i*) Assize Rolls, No. 528, m. 6, 7 Edw. III.

of William, and others for fishing in *libera et separali piscaria sua* apud Careby (Lincolnshire).

In 18 Edward II., A.D. 1324 (*k*), Thomas de Maydenhache sued William de Birmingham for trespass "in *libera piscaria ipsius Thome* apud Aston juxta Birmingham." The defendant admits the fishing, and says that he and his ancestors used to fish there "*a tempore, ita quod prædictus Thomas nec aliquis antecessorum suorum aliquam separalem piscariam habuit.*" The plaintiff replies that he and his ancestors held *separalem piscariam* from Moyssiche to the bridge of Straford, and that he and those who held those tenements in Aston before him had "*separalem piscariam*" in the said place.

These instances of the indifferent use of the words "*libera*" and "*separalis*" clearly show that the words, as applied to fisheries, meant at this period the same thing. At a later period these expressions came to be used as terms of art which supposed certain distinctions between them, whereas, in fact, there were none. In the case of *An Alderman of London v. Hastings*, in 1657, the Court resolved that if the owner of a *several* fishery grants *liberam piscariam*, the grantee shall have free fishing with the grantor; but if he grant *piscariam suam* without saying more, the entire fishery shall pass. This is an absurd and artificial distinction, and a good example of the confusion which arose from the attempt to distinguish free from several fisheries.

A very large experience of fishery titles enables the authors to say that in a long succession of title deeds it will constantly be found that the particular fishery is sometimes described as "*several*" and sometimes "*free.*" The manorial fishery at Cookham, on the Thames, is described, *temp.* Henry III., as "*libera piscaria Domini Regis,*" and in many later records as "*separalis piscaria*" and "*separalis aqua Domini Regis,*" and it clearly included the soil and water of the Thames as parcel of the manor (*l*). Many other instances might be given. A fine (*m*) of the manor of Yealmpton (Devon) in 26 Elizabeth, A.D. 1584, describes the fishery and right of free warren belonging to that manor as "*separalis et libera piscaria, separalis warrena.*"

A fishery described as "*libera piscaria*" and a fishery described as "*separalis piscaria*" means an exclusive fishery held by the owner "*in defenso,*" *i.e.* a fishery in which no one but the owner had the right to fish. "*Et dicit quod ipse et antecessores sui*

(*k*) Coram Rege Roll, No. 124, ro. 59, Warwick.

(*l*) The title to the soil of part of this fishery was established in the case of *Palmer v. Andrews*, 1902, unreported.

(*m*) Fines, Devon, Mich. 25—26, Eliz.

semper tenuerunt prædictam aquam *in defenso*, prout terre sue jacent" (*n*). "Tenent quandam ripariam *in defenso* que vocatur Pymdeswalye non permittendo aliquos in eadem piscare que communis esse solebat omnibus ibidem piscari volentibus" (*o*).

An instance of the use of the word "piscatio" (*p*), to indicate a reserved right of fishing occurs in a charter *temp.* Henry III., whereby John de Lancaster grants to the prior of Cartmel "liberam piscariam in aqua quæ dicitur Halton Tarn, salva mihi et heredibus meis *libera piscatione* nostra per totam aquam omni tempore anni ad placitum nostrum."

The case of *Bloomfield v. Johnston* (*q*), tried in the Irish Exchequer Chamber, in 1867, decided that a grant made by a patent dated 3rd July, 8 James I., to Sir Edward Blennerhasset of several islands in Lough Erne, and also of a rectory and also of a free fishery (liberam piscariam) in Lough Erne, and also of other lands amounting to five hundred acres and also a free fishery (liberam piscariam) in Lough Erne, was not a grant carrying the soil of the lake to the middle of it, and was not a grant of exclusive fishery. The plaintiff relied on this grant and a confirmation of it; but the defendant produced eight other grants made by King James between the eighth and eighteenth years of his reign to different persons of lands. In each of these grants there was a grant of "ac etiam liberam piscariam in lacu suo sive aqua de Lough Erne," two of them using the expression "ac etiam liberam piscariam et libertatem piscationis in lacu," &c. The Crown was the owner of the entire lough, which is several miles in extent, and it would seem clear that these grants could not be construed as passing anything but a number of fishing rights "*libertates piscationis*," as two of them describe them, in the lake. The Judge at the trial directed the jury that the soil did not pass by the grant to Blennerhasset nor the exclusive fishery over against his land, but that it was a grant of the free and unrestricted privilege of fishing in the lake with others—in short, that it was a grant of "common of free fishery." It was contended for the plaintiff in error (*inter alia*) that the word "*libera piscaria*" was not a word of art, and that it was for a jury to put a meaning to it; also that it was the same and meant the same thing as "*separalis piscaria*," Whiteside, C.J., learnedly discusses the authorities on these points, and decides that there is a distinction between "*libera piscaria*," and "*separalis piscaria*," when used in a Crown grant; and con-

a Assize Roll, No. 392, 20 Edw. I. roll 56 d.

b *Ibid.*, m. 10.

c D. of Lanc. Deeds, L. 289.

q 1868's Ir. Rep. C. L. 68.

trasting the grants in the case with the grant of Lough Foyle in the case of *Allen v. Donnelly* (*r*), which was a grant of the whole water, bay, river, stream, or rivulet of Lough Foyle, and the whole ground and soil thereof, and also the whole piscary, &c., cites the case of *An Alderman of London v. Hastings* (*s*), in which it was resolved that if a grantor having a several fishery grants *liberam piscariam*, the grantee shall have free fishing with the grantor, as conclusive on the point.

The use of the expression "*libera piscaria*" (*t*) in these grants by King James to mean an incorporeal right of fishing was not inadvertent or accidental. At that period, lawyers had come to regard "*libera piscaria*" as a term having the meaning of incorporeal fishery or a common of fishery; and Lord Coke in his edition of Co. Lit. 122 a, first published in 1628, only expresses the view then held by lawyers when he says, "if he claims to have *communiam piscariæ vel liberam piscariam* the owners of the soil shall fish there," and seems to treat free fishery as synonymous with common of fishery. His text should have been *communiam piscariæ vel liberæ piscariæ*, i.e. "common of free fishery" (*u*), which is precisely what the lawyer who drew King James the First's grants (said to have been Sir John Davies) intended when he described them as "*libera piscaria in lacu*," and as "*liberam piscariam sive libertatem piscationis in lacu*," &c.

The case, therefore, only shows that by the time of James I. the word "*libera*" had acquired in the legal mind an artificial meaning which it clearly had not in the time of King Edward I. or King Edward III., and which it has since been decided it has not (*x*).

(*r*) (1856) 5 Ir. Ch. Rep. 229.

(*s*) (1657) 2 Sid. 8.

(*t*) Coke, 1st ed. 1628.

(*u*) 2 Rolle Abr. 267.

(*x*) *Malcolmonson v. O'Dea*, (1862) 10 H. L. C. 593.

CHAPTER VIII.

INCORPOREAL FISHERIES IN TIDAL WATER.

It is universally recognised that there may be such a thing as an incorporeal right of fishery in tidal waters coming into existence by grant of the Crown whereby the mere right of fishing in and over the soil of the Crown is given to a subject (*a*). The Crown, of course, could make such a grant; but before assuming, as has hitherto been very largely done, that the Crown did usually and generally make grants of this nature (*b*), it may be well to consider the question after the manner of Lord Hale and examine the evidence that exists throwing light on the subject. We have the authority of Lord Hale (*c*) that fishing exercised by weirs and engines fixed in the soil is a fishing arising "by reason of or in concomitance with the soil or interest or propriety of it," and he gives many instances, "the most whereof," he says, "will appear to be by reason of the propriety of the very water and soil wherein the fishing is, and these a subject may have in the sea and the arms and creeks thereof." Lord Hale's dictum was considered in the case of *Att.-Gen. v. Emerson*, and Lord Herschell invited counsel to cite any authority for the proposition that the mere grant of a several fishery conferred the right to thus occupy the soil; but they were unable to do so, and although in his judgment he states that "it need not be determined on the present occasion whether the right to maintain such structures as Lord Hale refers to, necessarily imports in all cases the ownership of the soil, nor whether a kiddle such as has been proved to be in lawful use on the foreshore in question falls within the class specified by Lord Hale"; he decides that "it is impossible to deny that the right to maintain a kiddle affords cogent evidence that the person possessing this right is the owner of the soil." Assuming, therefore, that when a fishery in tidal water is worked by fixed engines of a permanent character, as weirs, &c., such a fishery is not an incorporeal right, but is a fishery arising from the ownership of the

(*a*) Hale, cap. v.; *Att.-Gen. v. Emerson*, [1891] A. C. 654.

(*b*) Hall on the Sea Shore, pp. 722 *et seq.*; Blackstone, 2 Com. 39.

c De Jure Maris, cap. v.

soil, we may next inquire what authority can be shown or what instances given of an incorporeal fishery in tidal waters in the possession of a subject. One case alone appears, *Duke of Somerset v. Fogwell* (*d*), and that case is an example of the dangers of a Judge laying down propositions of law when not in a position to know the whole of the true facts of the case, and of making hasty assumptions of facts.

The case relates to a fishery in the tidal water of the river Dart, which was parcel of the manor of Berry Pomeroy. The manor was granted out by the Conqueror to Ralph de Pomerai as part of a large barony (*e*). The terms of this grant are unknown. The fishery was parcel of the manor in 9 Edward I., A.D. 1315 (*f*). It was let in the times of King Henry VIII. and Edward VI. as parcel of the manor at a rent (*g*). Fines levied of the manor and its possessions at this period describe a several fishery in the water of Dart as parcel of it. The manor came to the Crown by the forfeiture of the Duke of Somerset, and remained in the Crown till, by patent dated 18th February, 44 Elizabeth, A.D. 1601—1602 (*h*), the Queen granted to Edward Seymour, Esq., all those the lordships and manors of Berry Pomeroy and Bridgetown Pomeroy and the Castle of Berry Pomeroy with all their rights, members, liberties, and appurtenances, lately parcel of the possessions of Edward, late Duke of Somerset, and formerly parcel of the possessions of Sir Thomas Pomeroy, Knight, and, by the general words, granted all “waters, fisheries, fishings” to the said manor and castle in any-wise belonging or appertaining or reputed and known as members, parts, or parcels of the same. The grant contains a clause granting that the grantee should enjoy certain franchises and incorporeal rights, as Courts leet, assize of bread and beer, free warren, wreck of the sea, chattels, waived estrays, &c., as fully as all former owners of the manor had them, but it does not include “fisheries” in this clause; which, if the fishery had been as Mr. Justice Bayley’s judgment decides, a fishery in the nature of a franchise, it would have done. It is clear that on a true construction of this grant the fishery passed as parcel of the manor, and not as a franchise appendant or appurtenant to it, as the free warren and the wreck. The question in the case was whether the duke having by an agreement in writing, but not under seal, demised to one Mills “the fishery in, upon, and out of the river Dart and the adjacent streams and banks of the said river with all rights, privileges, and

(*d*) (1826) 5 B. & C. 875.

(*e*) Domesday Book.

(*f*) Inq. p. m. 9 Edw. I. 82.

(*g*) Min. Acc. 6 Edw. VI.—1 Mary, No. 45.

(*h*) Pat. 44 Eliz., p. 16, ro. (7) 83.

appurtenances whatsoever attached to or appurtenant to the said fishery as fully and amply as the said duke was entitled to the same; and also the sand bank situate and lying in the parish and manor of Berry Pomeroy," for three years, at a rent of 40s. for the fishery and 5s. for the sand bank, had put himself out of possession of the fishery so that it was necessary that Mills should be joined as a plaintiff in the action. The only documents produced at the trial were the two fines of 2 Edward VI. and 2—3 Philip and Mary, the grant of 44 Elizabeth, and the agreement. Receipt of rent for the fishery was proved but no evidence given of any user of the soil, because it was the plaintiff's object to prove the fishery to have been an incorporeal hereditament which could only be demised by a grant under seal. The Judge at the trial at the assizes directed the jury that as it was a right in a navigable river it was an incorporeal hereditament which lay in grant and not in livery, and that a term of years could not be created in it without deed, and they found for the plaintiff. On the argument for a rule for a new trial counsel for the plaintiff argued that the fishery was incorporeal; that the agreement did not purport to demise to Mills the bed of the river; that the duke might be owner of the soil under some grant from the Crown, but that the acquisition of the soil could not affect the nature of this fishery, which would still only be vested in him as a royal franchise, and that the lease to Mills was only a license to fish. Counsel for the defendant contended that a several fishery was presumed to comprehend the soil till the contrary appears, and that the lease to Mills of "all his said fishery" was sufficient to convey to Mills the right in the soil. Mr. Justice Bayley, in giving judgment, said: "No conveyance of the right of fishery or of the soil was produced at the trial, but it appeared not to be an ordinary fishery resulting to the owner of the adjoining land in respect of the land, but a fishery in a navigable river where the tide flows and reflows and therefore in the nature of a royal franchise, which Sir W. Blackstone calls a free fishery. I have no difficulty in saying that in my judgment this was not a territorial but an incorporeal franchise." He cites Co. Lit. 4b as authority that by the conveyance of a several fishery the soil doth not pass (i). He further says: "In the present case it appeared by the fines given in evidence (*which were probably in the language of the original grant*) that the Duke of Somerset had nothing more than a fishery without the property of the soil and water; for that would have been the case even had the grant been made to a subject, and there-

(i) This dictum of Coke has been overruled: *Marshall v. Ulleswater*, (1863) 3 B. & S. 732; *Holford v. Bailey*, (1846) 13 Q. B. 444.

fore *à fortiori* he could take nothing more by a grant from the Crown. It was contended in argument that the owner of a several fishery must be presumed to be the owner of the soil. That may be true when the terms of the grant under which he claims are unknown; but when they *appear*, and are such as convey an incorporeal hereditament only, the presumption is destroyed. If, then, the grant to the Duke of Somerset gave nothing more than an incorporeal hereditament, of course that alone could be granted by him. He does not indeed profess to grant more, the agreement purports to grant fishery only, and that agreement not being under seal could not operate as a demise for years of that which lies in grant."

It is submitted that this judgment rests upon a fallacy. Both the learned Judges, notwithstanding the authority of Lord Hale (whose treatise was at this time (1824) not supposed to have been written by him), appear to have assumed the Crown's title to the soil of tidal waters as absolute. Mr. Justice Bayley says that no conveyance of the right of fishery or of the soil was produced, which is inaccurate, for there was the grant of the manorial fishery. He adopts Blackstone's definition of a "free fishery," which has been shown to be inaccurate. He makes the astounding guess that the language of the fines was the language of the original grant made before Magna Charta, and, on the strength of this mere guess, pronounces that the terms of the grant are known, and that they show that the fishery was an incorporeal hereditament in the nature of a royal franchise. It has been decided that a fishery in tidal water is not a royal franchise, and does not, on coming into the hands of the Crown by escheat, forfeiture, &c., merge in the Crown (*k*).

In the case of *Att.-Gen. v. Emerson*, where the defendant, claiming the foreshore of the Maplin Sands, proved a several fishery over them, it was contended for the Crown that proof of the ownership of a several fishery is not evidence of title to the soil; that a mere grant of foreshore would not carry with it the right to a several fishery; nor does the grant of a several fishery necessarily carry the soil, and Co. Lit. 4 b, and the case of *Duke of Somerset v. Fogwell*, were cited in support of the argument.

Lord Herschell in his judgment says (*kk*): "It is not now in dispute that the defendants are possessed of a several fishery over a part of the foreshore; but it is said, and truly, that this is not inconsistent with the foreshore over which this right is possessed being still in the Crown. A grant of the foreshore between high and

k *Duke of Northumberland v. Houghton*, 1870, L. R. 5 Exch. 127, and cases cited. (*kk*) [1891] A. C. at p. 654.

low water mark admittedly would not of itself convey the right to a several fishery over it. On the other hand, a several fishery might be granted independently of the ownership of the soil. But it is said that the possession of a right of several fishery is evidence of the ownership of the soil over which it is exercised. It has undoubtedly been laid down in more than one case that the ownership of a several fishery raises a presumption that the freehold is in the grantee of the several fishery. And Parke, B., in delivering the judgment of the Exchequer Chamber in *Holford v. Bailey* (l), said: 'A several fishery is, no doubt, *prima facie* to be assumed to be in the soil of the defendant.' And although in *Marshall v. Ulleswater Steam Navigation Company* (m) Cockburn, C.J., stated that, apart from authority, he should have come to a different conclusion, the Court adopted the law laid down in *Holford v. Bailey* (l).

"But it was argued before your Lordships that there was no ground for such a presumption in the case of tidal waters, the soil below which is *prima facie* in the Crown, and where a several fishery must have been the subject of a separate grant. In support of this distinction the case of *Duke of Somerset v. Fogwell* (n) was cited. But I do not think the judgment in that case warrants the proposition for which it was cited. Bayley, J., who delivered the judgment, said: 'It was contended in argument that the owner of a several fishery must be presumed to be the owner of the soil. That may be true where the terms of the grant under which he claims are unknown; but where they appear, and are such as convey an incorporeal hereditament only, the presumption is destroyed.' It is unnecessary to inquire whether the conclusion arrived at in that case, that the terms of the grant were known, was correct; the presumption, so far from being denied, appears to me to be recognised.

"Finding, then, such high authority for the proposition that the ownership of a several fishery is evidence of the ownership of the soil, I am not disposed to depart from it. Nor am I inclined to inquire upon what basis it rests, though in former days the exclusive right of fishing over the foreshore being, no doubt, the most valuable right of property connected with it, it may have been thought probable that where this right was granted, either the fishery would be conferred upon one who was already owner of the soil, or the soil would be granted with it. But proof of the ownership of the fishery is, of course, evidence only of a title to the soil, capable of being rebutted, and the weight of which must depend upon the other circumstances of the case, which may show it to be of but little importance."

(l) 1846 13 Q. B. at p. 444.

(m) 1863 3 B. & S. 732 : 32 L. J. Q. B. 139.

(n) 1826 5 B. & C. at p. 886.

Lord Herschell therefore practically overrules the case of *Duke of Somerset v. Foguwell*, and the House of Lords decides that the ownership of a several fishery over part of the foreshore raises a presumption against the Crown that the freehold of the soil of that part of the foreshore is in the owner of the several fishery. *Pari ratione* this decision would be the same as to the bed of a tidal river.

This case is the only instance that has been found either in reported cases or in records which suggests that several fisheries in tidal waters were granted as incorporeal hereditaments in the nature of franchises. Lord Herschell's view that in former days, when fishery rights were valuable, the fishery would be conferred upon one who was already owner of the foreshore, or the soil would be granted with it, is most probably correct. As Lord Hale would have said, "with this agrees common experience," which is supported by the dictum of Chief Baron Palles, whose very large experience of fishing rights entitles him to speak with very great authority. "It appears to me" (he says (*o*)) "to be beyond dispute that the exclusive right of fishing in tidal waters vested in the hands of the Crown is no more than an incident of the soil over which the water flowed as affected by the exercise of the King's prerogative of excluding the public, and that right can and generally does exist in the subject as an incident to the soil, and not as an incorporeal hereditament."

It is admitted that there may exist such a right, but it is to the last degree improbable, so much so that it is now established that the presumption is that the ownership of a several fishery in tidal as well as non-tidal waters carries with it the ownership of the soil (*p*).

The general result of the authorities as interpreted by Lord Herschell and Palles, C.B., and the investigation of records, is that, although it is always *possible* that there may be an incorporeal fishery in tidal waters by grant of the Crown, the existence of such a right is to the last degree improbable, and very little evidence of actual user of the soil, in addition to the exercise of the right of fishing by net and fixed engines over the soil, would suffice to negative the presumption of such a grant, and establish the ownership of the soil by the owner of the several fishery.

When it is considered that we know nothing of the method by which the public fishing was excluded in tidal waters upon the

(*o*) *Duke of Devonshire v. Neill*, (1877) 2 L. R. Ir. 169.

(*p*) *Att.-Gen. v. Emerson*, *ubi supra*; *Hindson v. Ashby*, [1896] 2 Ch. 1.

creation of several fisheries, it may well be that the public right of fishing was allowed by tacit permission over all tidal waters so long as they remained in the Crown, and were not specially appropriated by the Crown and turned to profit; yet, whenever the Crown granted out a district of land, afterwards called an honour or a manor, which comprised within it tidal water and the soil thereof, the mere fact of putting it into the possession of a subject *ipso facto* excluded the exercise of the public right. This is, of course, possible. There is one record, however, that suggests that the possession of the right to keep a tidal water several was due to a license from the King, viz., the case of *The King v. The Mayor and Burgesses of Preston* (q), where they were challenged for having a several fishery “*sine licentia Domini Regis.*” There exists, however, no document in the nature of such a license so far as we are aware.

Researches amongst public records give no clear instance of any incorporeal fishery in tidal waters, nor do we find a fishery treated as a royal franchise.

In the innumerable proceedings by *quo warranto* during the reigns of Edward I., Edward II., and Edward III., by which the Crown sought to regain liberties granted to subjects on the ground that they had been usurped against the Crown without warrant or charter, we scarcely find any writs of *quo warranto* to recover fisheries, except fisheries belonging to the Crown as part of its own manors. Fisheries were evidently not considered as royal franchises, except perhaps in tidal waters. A few cases do appear; but when we consider the great number of presentments of appropriation of several fisheries, and of erecting weirs and fishing engines, in tidal waters made in the return to the great commission of inquiry as to rights usurped against the Crown and the subject, called the Hundred Rolls, it is matter of surprise that the Crown attorneys, if they thought that several fisheries were the subject of franchise, should have issued so few writs and taken so few proceedings in *quo warranto* against lords of manors for usurping fisheries. In the time of Edward I. fisheries existed in nearly all the tidal rivers of the kingdom, all of which, or nearly all, were fished by weirs or engines fixed in the soil, and the existence of such fisheries so worked leads to the conclusion that it was well understood at that time that fisheries in tidal water were, in fact, as has been suggested by Chief Baron Palles, profits of the soil, the public right of fishery over which had been excluded either by the exercise of the King's prerogative or by the act of the grantee, when the manors within

(q) *Placita de Quo Warranto*, p. 387. See next page.

which the tidal water ran were granted out by the Crown; and that fisheries were not incorporeal rights over the soil of the Crown granted as franchises, or as one of the flowers of the Crown. This has been laid down as law in the case of *Duke of Northumberland v. Houghton* (r). The only cases of *quo warranto* for fisheries that have been discovered are the following:—

In 20 Edward I. (s), a *quo warranto* was brought against the corporation of Preston for claiming “libera piscaria in aqua Domini Regis de Ribble apud Preston” without license of the King or his progenitors. The corporation say that Henry de Lacy, Earl of Lincoln (the owner of the opposite manor), holds the fishery with them in common, so that they divide the fish caught in equal portions. The King’s attorney says that they and the earl “sciunt separale suum divisim,” so that from the mid-stream towards Preston is the several fishery of the men of Preston, and the other moiety is the earl’s, and that, if they divide the fish, it is by agreement, and that they do not hold the fishery in common. The jury find that they did hold in common, and they are discharged. The object of the suit is not clear, unless we suppose that the King, being lord of Preston, wished to have the division of the borough from the manor made clear.

There is a proceeding by presentment in Eyre in 20 Edward I., A.D. 1292 (t), against Robert de Chaundos, for appropriating to himself a fishery in the river Wye, at Fownhope in Herefordshire, situate about midway between Ross and Hereford, which used to be common to all the men of the county to fish. He defends, and says “quod habet piscariam videlicet per terras suas de Fogehop usque ad medietatem prædictæ aquæ de Weye tanquam pertinentem ad manerium suum de Fogehope,” and that his ancestors were in seizin of it, and denies that he appropriated it. The jury find that his ancestors were seized “de prædicta piscaria tanquam pertinente ad prædictum manerium,” and he is discharged.

At the same Eyre John de Tregoz (u) is presented for appropriating a fishery in the Wye which used to be common. He pleads that his lands lie adjacent to the river on both sides, and that he and all his ancestors “semper tenuerunt prædictam aquam in defenso prout terræ suæ jacent.” The jury find for his plea, and he is discharged. In the same year John de Tregoz (v) is challenged by *quo warranto* for other liberties, but nothing is said about the fishery.

(r) (1870) L. R. 5 Exch. 127.

(s) Plac. de Quo Warranto, p. 387.

(t) Assize Roll, No. 302, m. 53.

(u) *Ibid.*, m. 56 d.

(v) Placita de Quo Warranto, p. 268.

At the same Eyre (*x*) a writ of *quo warranto* was brought against William de Valence and Joan his wife for claiming free chase and free warren in his woods of Denard, in Castle Goodrich, “et liberam piscariam in aqua de Wye.” The defendant did not appear, and the result of the proceeding is not known.

In 7 Edward II., A.D. 1313 (*y*), the abbot of Battle was presented at the Eyre for Kent for claiming *liberam et separalem piscariam* in aqua de Wye inter Blakewelle and Cokmannesford, which used to be common. The abbot pleads that King William the Conqueror gave to his church of Battle the manor of Wye “cum omnibus appendiciis suis,” and that he and his predecessors from that time “prædictam piscariam in riparia prædicta in separalitate tenuerunt absque hoc quod aliquis ibidem piscari debuit sine licencia ipsius abbatis vel predecessorum suorum.” The jury find that the abbot and his predecessors “prædictam piscariam in riparia prædicta tenuerunt in separalitate a tempore prædicto *ratione manerii sui*,” and he is discharged.

These cases show that a fishery was not matter of franchise, but merely matter of manorial right.

There is a proceeding in *quo warranto* in 21 Edward I. (*z*) against Nicholas de Meynil, the lord of the manor of Eston, on the Tees, where the river is tidal. He is challenged for claiming free warren. He produces his grant of warren. The King’s attorney thereupon alleges that he has exceeded his right by keeping his free neighbours’ lands inwarrened, and also “quod tenet riparias adjacentes maneriis suis in warrenatas auctoritate prædictæ cartæ ita quod nullus ibidem capere possit piscem nec volucrum ripariorum sine licentia sua.” To this Meynil pleads that he never hindered any one from fishing in the rivers adjacent to his manor, except in his park and close. Issue was joined, but the case was never tried, because all *quo warrantos* were superseded by the King in the following year. The foreshore of the Tees was parcel of one of the manors belonging to Meynil, and on it the abbot of Fountains, under a grant from the lord of the manor, had a fishery, and erected extensive weirs.

There is a *quo warranto* against Thomas de Multon (*a*) for liberties in Burgh upon Sands and a free fishery in the river Eden (Cumberland). He proves his title by prescription. Another case occurs in 21 Edward I. against the Earl of Cornwall for claiming to hold the waters of Use and Yore (*c*) (Yorkshire) several, so that no one shall fish there, and to take toll of ships. Another in

(*x*) Assize Roll, No. 392, m. 38 d.

(*y*) Assize Roll, No. 384 b, m. 10.

(*z*) Plac. de Quo Warranto, p. 204.

(*a*) Plac. de Quo Warranto, p. 123.

(*c*) *Ibid.*, p. 212.

3 Edward III. (*d*) as to a free fishery at East Bridgeford (Nottingham), and to take toll of ships. There is also another in 30 Edward I. against the prior of Bodmyn (*e*), in Cornwall, for a free fishery "per totam aquam de Aleyn at Eyle." This is probably a fishery in the river Camel, which falls into the sea at Padstow, and probably partly tidal. These are all on tidal rivers.

There is one case of a non-tidal river in 3 Edward III. (*f*), viz., a free fishery in the water of Irewys (Erewith) in Nottinghamshire. The lord of the manor is challenged for taking amendment of the assize of bread and beer, free warren, and the free fishery. He pleads to the suit and claims all the liberties "except the aforesaid fishery," by prescription. He does not disclaim the fishery, and the King's attorney does not challenge it as a usurped liberty. He is discharged, and it is obvious that the fishery was not treated as a royal franchise, probably because it was observed that it was in non-tidal water.

There appears to have been an idea in the minds of the jurors that fisheries in non-tidal water were also franchises. There is one case which seems to show that the King's attorneys knew that such fisheries were not of the nature of franchises. In 6 Edward I., A.D. 1278 (*g*), the jurors at the Eyre in Cumberland, present that all the rivers of Gillesland, used to be common to all persons until Matilda de Vallibus, lady of Gillesland, four years ago appropriated to herself the fishery in the said rivers, not permitting any one to put any net in the water, to the grievous damage of the country. The sheriff was commanded to summon the said Matilda. They also present that she claims warren in Gillesland. Matilda de Vallibus was the lady of the barony of Gillesland, which had been granted by King Henry the Second and King Richard the First to her ancestor to hold with all waters and fisheries. In 21 Edward I., A.D. 1292 (*h*), Matilda was summoned by *quo warranto* for claiming warren and other liberties in Gillesland, but there is no charge for claiming any several fishery. The inquisition taken after her death shows that she had the fishery, and its title was traced downwards in the case of *Ecroyd v. Coulthard* (*i*). There was a similar charge against Roger de Lancaster for keeping Ulleswater Lake in severalty, but there is no record of any *quo warranto* against him.

Whatever doubt may have existed in the times of Edward the First and Edward the Second as to a several fishery being in the nature of a franchise or liberty was evidently cleared up and settled

(*d*) Plac. de Quo Warranto, p. 617.

(*e*) *Ibid.*, p. 110.

(*f*) *Ibid.*, p. 638.

(*g*) Assize Rolls, No. 131, m. 9.

(*h*) Plac. de Quo Warranto, p. 126.

(*i*) [1898] 2 Ch. 358.

before the time of Edward the Third. On 3rd July, 27 Edward III., A.D. 1353 (*k*), Edward the Black Prince, as Earl of Chester, issued a commission to his Justices, William de Shareshull, the Chief Justice of the Court of King's Bench, and Roger Hillary, Chief Justice of the Court of Common Pleas, ordering them to make proclamation in the county of Chester for all persons claiming liberties by charter or otherwise to come in and make their claim and show by what warrant they so claimed. Many lords of riparian manors in the county, who owned the foreshores of the Mersey and the Dee as parcel of their manors, sent in their claims to wreck of the sea and other liberties. Among them Henry de Hooton, the lord of the manors of Hooton on the Mersey and Rothscotewike on the Dee, claimed divers liberties and among them "transfretare cum naviculis suis cariantibus blada et omnia alia necessaria et venalia in quibuscunque partibus ad pacem Domini Regis Anglie existentibus sine licencia ab aliquo petenda, et habere piscariam in aqua de Dee et Mersee infra bundas suas proprias de Hooton et Rothscotewike usque ad filum de prædictis aquis cum omnibus piscariis piscationibus retibus et naviculis et cum omnibus ingeniis et instrumentis omni tempore anni et omnimodis pisees capere ad opus suum et omnia alia proficua percipere præter wreccum regalem thesaurum quale sturghion et thurlehed." A writ of *quo warranto* was brought against him charging him to prove his claim. To this part of the charge he pleads as follows: "Et quo ad hoc quod superius clamat, transfretare cum naviculis suis, &c., et piscare in aquis de Dee et Mersee, &c.; dicit quod qualitercunque ipse illas tanquam libertates clamabit, tamen transfretare cum naviculis suis propriis datur de communi jure, et piscari infra bundas suas proprias, &c., est liberum tenementum suum, et non cadit in clamio libertatis per quod necesse non habet warantum ad presens inde ostendere. Ideo consideratum est quod quo ad transfretationem et piscariam eat inde sine die, &c." There are similar claims and pleas in the cases of the lords of the manors of Hasilwall, Leghton, Norton, Hargreave on the Dee, and in each the judgment of the Court is the same. It is, therefore, clear that the Chief Justice held that a fishery in tidal water was not a franchise but merely a profit of the soil. The idea that a fishery in tidal water was a franchise granted by the Crown prevailed down to the present day, as has been shown above, and as late as 1887, in the case of *Duke of Devonshire v. Pattinson* (*l*), the contention was strongly urged, and Smith, J., decided that a fishery belonging to a manor in

(*k*) Chester Quo Warranto Rolls, 27—31 Edw. III. m. 1.

(*l*) 20 Q. B. D. 263.

non-tidal water was a franchise arising by grant of the Crown, but this was reversed by the Court of Appeal. It must, therefore, be taken as settled law, that a fishery in tidal water exercised over land belonging to the owner of the fishery is not a franchise, but a profit of the soil as held by Chief Baron Palles, and now that it has been settled that the ownership of a several fishery in tidal water raises the presumption of ownership of the soil (*m*), there would seem to be but little chance of showing that a several fishery in tidal water ever had its origin in a grant of an incorporeal right of fishery by the Crown. No such case is known to exist, although of course it is a possible condition of things. Of course, a fishery originally coming into existence by a grant of the soil may have been severed from the soil and granted as an incorporeal hereditament by the owner of the soil, and a few of such cases may be shown; but when a fishery is traced back to an ancient grant, the presumption will be that the soil passes with the fishery, and this presumption can only be rebutted by showing clear evidence of acts of ownership in the soil adverse to the right of the owners of the fishery.

(*m*) *Att.-Gen. v. Emerson*, [1891] A. C. 649.

CHAPTER IX.

INCORPOREAL FISHERIES IN NON-TIDAL WATER.

OCCASIONALLY lawyers and conveyancers, misled by conflicting dicta of Coke and others as to the meaning of the words "free" and "several," have looked upon fisheries as being always incorporeal hereditaments, and have frequently dealt with and conveyed them as such, when in truth they were what has been called "territorial" fisheries, *i.e.* fisheries with the soil, *e.g.* manorial fisheries, where the right to the soil of the water and the right to its profits have never been severed the one from the other. The owners of incorporeal fisheries in non-tidal water must have originally derived their right from the owner of the soil, for "fishery is a profit of the soil, as the grass of other lands" (*a*). To decide whether a particular fishery is incorporeal or not is often an extremely difficult question. It is, as Bowen, L.J. said, a question of fact in every case, and must depend more upon the evidence of the user than upon the description in the parcels of the title deeds. Where there has been user of the soil, as cutting weeds, getting sand and gravel, using fixed engines, &c., and especially paying of rates before the Rating Act of 1874, the fishery will be shown not to be incorporeal. Fisheries were frequently conveyed by ambiguous and uncertain descriptions as "all that free fishery or right of fishing," "all those our fishings," &c., "all that the fishery and right of fishing," and such like descriptions. These descriptions must not be taken to show definitely that the right conveyed is only incorporeal. The evidence of user and the circumstances surrounding the conveyance may be looked to to explain the intention of the grantor of the deed (*b*); and it may be taken as a general rule that all manorial fisheries which have remained parcel of and in unity of possession with the manor are territorial fisheries with the soil, and that *prima facie*, when they have been severed from the manors, the soil has been conveyed with them to the

(*a*) Y. B. Trin. 10 Hen. VII. pl. 1; 2 Bl. Com. 39; Chitty, Game Laws, 295; opinion of Wood, B., *Marshall v. Ulleswater*, 1866 3 B. & S. 732; *Duke of Devonshire v. Noll*, 1877 2 L. R. Ir. 132.

(*b*) *Duke of Devonshire v. Pattinson*, (1887) 20 Q. B. D. 263.

grantee of the fishery (*c*), and it is established now that this presumption stands until the contrary be proved (*d*). An incorporeal fishery is therefore now looked upon as the exception rather than the rule.

An incorporeal fishery can only be granted by deed (*e*). It will pass by a grant of all other estates of inheritance (*f*). It is not an easement but an interest, and is a *profit à prendre* in the soil of another, and may exist in gross (*g*). It may be appurtenant to a house or land (*h*). It is not within the Prescription Act, 2 & 3 Will. IV. c. 71 (*i*). But it would not appear to be a sufficient interest in land to give a claim to compensation under the Lands Clauses Act (*k*).

A fishery may be let by verbal agreement, and even when no rent is agreed upon the landlord is entitled to sue the tenant for a reasonable rent for use and occupation (*l*). A deed granting an exclusive right of fishing for a term of years gives a right to fish and carry away the fish caught, and entitles the grantee to a right of action against any one who injures the fishery (*m*).

A fishery is so far real estate that it is subject to dower (*n*).

It will merge in the soil if acquired by the owner of the soil. "A way or common shall be extinguished by unity of possession, because they are part of the profits of the land, and the same law as of fishings also" (*o*).

(*c*) *Aldermen of London v. Hastings*, (1657) 2 Sid. 8.

(*d*) *Partheriche v. Mason*, (1774) 2 Chitty, 258; *Hindson v. Ashby*, [1896] 2 Ch. 1, and cases cited.

(*e*) *Duke of Somerset v. Fogwell*, (1826) 5 B. & C. 875; *Bird v. Higginson*, (1835) 2 A. & E. 696.

(*f*) *Cooper v. Phibbs*, (1867) L. R. 2 H. L. 149.

(*g*) *Hardres*, 407; *Rogers v. Allen*, (1808) 1 Campb. 309; *Shuttleworth v. Le Fleming*, (1865) 19 C. B. N. S. 687; *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. 135; *Wickham v. Hawker*, (1840) 7 M. & W. 63.

(*h*) *Hayes v. Bridges*, (1795) 1 R. L. & S. 390. See *Edgar v. Special Fishery Commissioners*, (1871) 23 L. T. N. S. 733.

(*i*) *Shuttleworth v. Le Fleming*, *supra*; *Bland v. Lipscombe*, (1854) 4 E. & B. 713, n

(*k*) *Bird v. G. E. Railway*, (1865) 19 C. B. N. S. 268.

(*l*) *Holford v. Pritchard*, (1849) 3 Exch. 793; *Bird v. Higginson*, (1835) 2 A. & E. 696

(*m*) *Fitzgerald v. Firbank*, [1897] 2 Ch. 96.

(*n*) Bacon's Abr. Dower; Park on Dower; *Greyes' Case*, (1594) Owen, 20.

(*o*) *Sury v. Pigot*, (1625) Popham, 166.

CHAPTER X.

OF FISHERY APPURTENANT TO OR PARCEL OF A MANOR.

WHEN we speak of a fishery as "appurtenant," we of course mean an incorporeal right of fishery unconnected with the ownership of the soil. Of course, it is possible that there may be such an incorporeal right appurtenant to a manor where the water is tidal. If such a right exists in any manor it must have arisen by a grant from the Crown of the manor limited to the high water mark, and a grant of the incorporeal right of fishery over the soil of the fore-shore and bed of the river adjoining the manor. No instance of such a grant has ever been produced, and speaking from a large experience the authors decline to believe that such a grant was ever made. Now that the case of *Att.-Gen. v. Emerson* (a) has decided that the ownership of a several fishery is evidence of the ownership of the soil, and raises a presumption against the Crown that the freehold of the soil is in the owner of the fishery, it would seem to be incorrect to speak of a manorial fishery owned by the lord of the manor as being "appurtenant" to the manor. It is rather *parcel* of the manor, a separate close and hereditament, including the soil and the exclusive profit of that soil, viz., the right of fishery.

The case is the same as to a manorial fishery in non-tidal water. So long as it remains in the hands of the lord of the manor it cannot be an incorporeal hereditament, for nothing has been done to sever the possession of the soil from the right of fishing. It is *parcel* of the manor, a separate close and hereditament, including the soil and its profit, viz., the right of fishing (b). Of course, as soon as the lord of the manor has parted with the right of fishing, the fishery may become incorporeal, because by his grant he may not have intended to divest himself of the soil; but the fishery in this case is no longer either *parcel* of or appurtenant to the manor. Therefore

(a) [1891] A. C. 643. See *Duke of Devonshire v. Neill*, (1877) L. R. Ir. 132, per Palles, C.B.

(b) *Duke of Devonshire v. Pattinson*, (1887) 20 Q. B. D. 263; Y. B. 10 Hen. VII. Trin. pl. 1. The owner of the soil ought of common right to have such profits as arise upon the land, and all profits and revenues, and when it is shown that it is fishery, then there is no other profit except fishery to be taken there which of common right ought to belong to the owner, as the grass of other lands.

it would seem that a fishery in non-tidal water cannot be rightly spoken of as being appurtenant to a manor. In old cases we find it so spoken of, probably because in old times fisheries were generally considered to be incorporeal hereditaments. Confusion has arisen from the technical value which has been given the word "pertinens." This word formerly meant "belong," in the sense that the thing belonging was parcel of the manor. In the Hundred Rolls (*d*) the manorial fisheries are described by boundaries and extent, *e.g.* Newton in Huntingdonshire, "*piscaria separales in aqua de Nene*," extending, &c., "*et continet unam leucam et dimidiam que pertinet ad manerium*." Chebenhurst (*e*) (Oxfordshire), "*Dominus habet in eadem villa piscariam in riparia de Thame in longitudine que durat quantum terre sue durat et duos gurgites ad eandem piscariam pertinentes*." The bishop of Winchester held the manor of Alberbury "*in quo idem episcopus habet separalem piscariam tanquam pertinentem ad manerium predictum*," and sues for a trespass in building a weir on his soil (*f*). Robert de Chaundos, lord of the manor of Foughehop (Herefordshire), claims his fishery "*per terras suas de Foughehop usque ad medium aque de Waye tanquam pertinentem ad manerium suum de Fugehop*" (*g*). The jury find that he was seized of the fishery *tanquam pertinentem ad manerium*. The abbot of Battle claims a several fishery in his manor of Wye because he had a grant from the Conqueror of the manor "*cum appendiciis suis*" (*h*). These were all cases of manorial fisheries in non-tidal waters, whence it is obvious that the water and soil were parcel of the manor, yet they are described as "*pertinentes*," which must be used in the sense of parcel of, not appurtenant or appendant to the manors. The lord of Carleton, near Snaith, had "*medietatem aque de Ayr et proficuum ejusdem aquæ* as parcel of his manor" (*i*). The lord of the manor of Dorchester on the Thames had the water of Thames and the free fishery as parcel of his manor (*j*). The lord of Wystowe (Yorkshire), having been presented for having weirs in the river Ouse, claimed that he had the moiety of the Ouse *within and parcel of his manor*, and that the weirs were "*in solo et dominio suo*" (*k*). The abbot of Waltham claims to have free fishing in the water of Luye in his demesne and to *make pools and erect weirs and dams in the same*, and

(*d*) Hundred Rolls, II. 646.

(*e*) *Ibid.*, II. 720.

(*f*) Coram Rege Roll, No. 260, m. 21 and 32, East. 18 Edw. II.

(*g*) Assize Roll, 302, m. 56, 20 Edw. I.

(*h*) Assize Roll, 384 a, m. 10.

(*i*) Pat. 38 Edw. III. p. 1, m. 46 d.

(*j*) Y. B. Hill. 4 Hen. VI. 11 b, pl. 7.

(*k*) Pat. 20 Hen. VI. m. 6.

the verdict passes for him (*l*). The abbot of Buckfast defends a suit as to fishery, saying that he was lord of the manor of Badd, that the water of Erme runs by the manor, and that "that water from one place to another where the manor is, *runs upon the soil* of the said abbot as *parcel of his manor*, and that he fished on his soil demesne." On this plea he succeeded (*m*). A man may have a free fishery in his own soil, as, for instance, he may have a river in his manor (*n*). Instances of this kind might be multiplied indefinitely (*o*).

In *Rogers v. Allen* (*p*), Heath, J., ruled that a fishery in the tidal water might pass as "an appurtenance" of the manor. The case referred to the fishery in the river Crouch at Burnham, in Essex, which is a tidal river, and the Judge was not aware that the soil of the water was parcel of the manor, and no doubt was under the then generally existing belief that fisheries in tidal water were all incorporeal, which was not the case at Burnham. This ruling has been followed (*q*), and text writers have all laid it down generally that a fishery may be appurtenant to a manor; but Lord Hale (*r*) states that a subject may have a fishery in tidal water without the soil or with the soil, "either in gross, as many religious houses had, or as *parcel of or appendant to* their manors as both corporations and others have had"; and of these fisheries he gives examples, remarking that "the most thereof will appear to be by reason of the propriety of the very water and soil wherein the fishing is"; and one of his examples is the fishery belonging to the manor of Burnham (the same as that dealt with in *Rogers v. Allen*), and he quotes a record of 50 Edward III. (*s*), which is a judgment of the King's Bench on a finding of a jury that the fishery is "*parcella manerii*," and the fishery, *with its weirs* (which shows that it was a fishery with the soil), was ordered to be delivered to the lord of the manor. Lord Hale had a most extensive knowledge of ancient records. He was familiar with the history of this fishery, and tried an action respecting it (*t*); and, knowing that it was a fishery with the soil, he refers to it as "parcel

(*l*) Assize Roll, 323, Hertford, 6 Edw. I. m. 37 d.

(*m*) Y. B. Hil. 21 Edw. III. p. 3, No. 10.

(*n*) *Gibbs v. Walliscot*, 1691) 3 Salk. 291; Skinner, 677.

(*o*) See *Carter v. Marcott*, 1768) 4 Burr. 2163, manor of Arlingham; *King v. Ellis*, (1813) 1 M. & S. 652, manor of Radley.

(*p*) (1808) 1 Campb. 309.

(*q*) See Hardr. 407; *Shuttleworth v. Le Fleming*, (1865) 19 C. B. N. S. 687, case of a lake; *Edgar v. Commissioners of Fisheries*, (1871) 23 L. T. N. S. 733; *Foster v. Wright*, (1878) L. R. 4 C. P. D. 438.

(*r*) *De Jure Maris*, p. 385.

(*s*) *Coram Rege*, T. 50 Edw. III. r. 2.

(*t*) *Lord Fitzwater's Case*, (1674) 1 Mod. 105.

of the manor," and not as appurtenant (*u*). It would appear, therefore, that it is incorrect to speak of a fishery in the hands of the lord of a manor as appurtenant to the manor in the sense of suggesting that it is an incorporeal hereditament, unless it can first be shown that it is an incorporeal fishery in tidal water, and of that kind of fishery there exists no single example, so far as is known.

(*u*) See Rastall's Entries, p. 597 b ; fishery described as parcel of a manor, *Cartier v. Murcol*, (1768) 4 Burr. 2163.

CHAPTER XI.

OF FISHERY APPURTENANT TO A PARTICULAR TENEMENT.

AN incorporeal right of fishing is frequently found annexed or appurtenant to a tenement or land. It arises from a grant from the owner of the soil of the fishery, usually the lord of the manor, who grants the tenement and together with it a right to fish in his fishery in common with him, sometimes over the entire fishery, sometimes over a portion of it, or for particular kinds of fish, or by particular nets and engines; and generally there is a condition that the fish taken must be used upon the tenement. It is, however, conceivable that the owner of the fishery might grant the right to fish in a particular portion of his fishery, to the exclusion of himself and all others, *e.g.* he might grant the right to fish *ex adverso* the land of his grantee exclusively.

It was decided in the Irish case of *Hayes v. Bridges*, in 1795 (*a*), that an oyster fishery (without the right to floating fish) may be prescribed for as appurtenant to land. The case was decided on demurrer. The facts did not appear. Lord Carleton treated the fishery as an incorporeal hereditament, citing Blackstone and *Hill and Grange's Case* (*b*), which, he says, speaks of fisheries generally as incorporeal inheritances, and decides that fisheries might be appurtenant to a corporeal inheritance.

In the Year-Book, 4 Edward IV., p. 29, pl. 7, we find a several fishery described as appurtenant to a house and eight acres of land and six acres of meadow.

In Rastall's Entries, 442, a several fishery was prescribed for as appurtenant to a mill and four acres of ground covered with water (*c*).

Examples of similar claims may be multiplied.

In 17 Henry III., A.D. 1232 (*d*), Simon de Divilston sues John Fitz Roger for deforeing him from his fishery in the water of Tyne and his reasonable estovers in wood and turbary in Corbridge, of which

(*a*) (1795) Ridg. L. & S. 390.

(*b*) (1556) Plowden, 170.

(*c*) In Hard. 407, it is said that in claiming a fishery by prescription it must be set forth whether it is claimed as "appurtenant to a manor, messuage, &c." See also *Godley v. Finch*, (1609) Yelv. 159.

(*d*) De Banco Roll, No. 7, m. 7 d; Mich. 16—17 Hen. III.

his father was seized "*tanquam pertinentia ad liberum tenementum suum quod habuit in Divilston.*"

In 26 Henry III., A.D. 1242 (*e*), William de Isenny claims common of fishery in the water of Stapelford "*tanquam pertinens ad liberum tenementum suum.*"

In 37 Henry III., A.D. 1253 (*f*), a defendant justifies fishing in a fishery "*ut in communi piscaria pertinente ad tenementum suum.*"

In 14 Edward I., A.D. 1286 (*g*), "the prior of Rochester claims common of fishery in the water of Tame, "*que pertinet ad liberum tenementum suum in Hadenham.*"

In 35 Edward I., A.D. 1307 (*h*), riparian owners claim against the lord of the manor common of fishery pertaining to their free tenements in the manor.

In 4 Edward II., A.D. 1310—1311 (*i*), the parson of Careby (Lincoln) established his right to common of fishery "*tanquam pertinentem ad liberum tenementum suum.*"

Mr. Justice Willes, in *Edgar v. Special Commissioners of Fisheries* (*k*), appears to doubt whether such an extensive right as a right to take all the fish in a public navigable river could be claimed as appurtenant to land. "You may have," he says, "a fishery appurtenant to land—and one has seen pleadings in which this sort of thing was claimed—that he and all he has in the said house have fished as appurtenant to the land; but when you come to prove the right, can you show under such a claim as that an exclusive right to take all the fish in a particular place? Can you show an exclusive right to take all the fish in a navigable tidal river? It has been decided over and over again that a right of that kind must be in some way connected with the enjoyment of the house. No doubt they might have the use of the fishery for the house; or even for their pleasure it might be connected with the enjoyment of the house. But a right to a fishery for the purpose of catching all the fish and excluding others for purposes of trade—that is, putting them in boxes and sending them off in ice—does not appear to be at first sight connected with the enjoyment of the house, and particularly not with the enjoyment of lands and ancient tenements as apart from the enjoyment of the house. It may be annexed to land, but you must have it for the use of the house by

(*e*), Assize Roll, 37, m. 18.

(*f*), Curia Regis Roll, No. 150, m. 19.

(*g*) Assize Roll, No. 63, m. 6.

(*h*) Coram Rege Roll, 189, m. 60.

(*i*) Assize Roll, 510, m. 11.

(*k*) (1871) 23 L. T. N. S. 733; Coulson, p. 352.

those who hold the land. Therefore it would be well to consider, if that question is worth anybody's while to raise, whether you can have an exclusive right to take all fish in a navigable river simply as appurtenant to land."

With great respect for that learned Judge, however, it is submitted that there is no difficulty in presuming a legal origin for a right of fishing exclusive of all persons, as well as for a right of fishing in common with the owner of the soil or his grantee of the fishery, as appurtenant to land. Why may not the lord of a manor, having a river in his manor, have granted to a tenant a freehold tenement with a right appurtenant to it to fish in a part or in all his river exclusive of him and of every one else, without conveying to him the soil? and would not such a right in time come to be described as appurtenant to the tenement? (*l*) The learned Judge admits that there may be a right of fishing appurtenant to a house, but says that a right of that kind *must be connected with the enjoyment of the house*. That is the common case of a grant by a lord to his tenant in the nature of a common of fishery, and such grants are frequently so restricted; but is it necessary to suppose that all grants are so restricted? Surely not. The cases above referred to seem to show that it is not so. In *Edgar v. Special Commissioners of Fisheries* it was decided that a several fishery cannot be prescribed for as appurtenant to pasture, and that you cannot have an exclusive right to fish in a navigable river as appurtenant to a house or land. This decision seems questionable, because, if the fishery in the navigable river is parcel of a manor, and the lord of the manor chooses to grant a house, or land, or even pasture, to a tenant, and to annex by his grant a right for the owners of the house, land, or pasture to fish exclusively such part of his fishery as he chose, why should he not do so? and if he could, why should not such owner prescribe for such a right and have a legal origin presumed to support his user of it?

If, in a case where the owner of a tenement, house, or land can show long user of an exclusive right of fishery in tidal water, and is able to show that the fishery within which he claims was a several fishery of ancient origin, as was the case in *Edgar v. Special Commissioners of Fisheries*, why may he not prescribe for a fishery granted to him by the lord of the manor out of his several fishery? The presumption of such a grant would be not only a possible but a highly probable legal origin for his user. Numerous cases of this kind can be shown, this right of fishing being, of course, an incorporeal right.

(*l*) Bracton, vol. iv. cap. 28, sect. 4.

CHAPTER XII.

OF COPYHOLD FISHERIES.

IN many manors fisheries in both tidal and non-tidal waters have been demised by copy of Court roll. Sometimes they are so demised in the regular course of copyhold "according to the custom of the manor," and descend according to the custom (*a*); in other cases, they are demised by lease entered on the Court rolls and are not copyhold. A question sometimes arises as to whether the demise is a granting of the soil with the fishery, or merely a demise of the incorporeal right of fishing. The decision of this question must depend upon the evidence in every case. The question was very fully discussed in the case of *Att.-Gen. v. Emerson* (*b*), and, although it was not definitely decided that only corporeal hereditaments could be so demised, it was decided that, although it may be that an incorporeal right is demisable by copy (*c*), yet nothing can be demised by Court roll which is not parcel of the manor; and, therefore, when we find fisheries demised by copy, that fact is evidence that the fishery, and the soil on which it exists, is situate within the bounds of the manor.

Rights of common of fishery are frequently found annexed to copyhold tenements in a manor (*d*), and are held according to the custom (*e*). As to the effect of enfranchisement of these tenements upon the fishing rights, see Elton on Copyholds, pp. 357, 364, 416.

In some manors the right of fishery is limited to the use of particular nets (*f*), or to particular seasons for fishing, or by the fish being used only on the copyhold estate, and it would seem that where this kind of common of fishery exists, the lord of the manor may not use the water where his tenants have a common of fishery

(*a*) *Att.-Gen. v. Emerson*, [1891] A. C. 648.

(*b*) [1891] A. C. 648.

(*c*) *Watkins on Copyhold*, I. 41, 42; *Hoe v. Taylor*, (1595) Cro. Eliz. 413; 4 Rep. 306; *Co. Copyholder*, s. 42; *Viner, Copyhold* (E.); *Elton on Copyholds*, pp. 14—16; *Musgrave v. Cave*, (1741) Willes, 319.

(*d*) *Tilbury v. Silva*, (1890) 45 Ch. Div. 98.

(*e*) *Lloyd v. Jones*, (1848) 6 C. B. 81; *Bland v. Lipscombe*, (1854) 4 E. & B. 713 n. See *Elton on Copyholds*, 14, 250, 307, 364, 416.

(*f*) *Tilbury v. Silva*, (1890) 45 Ch. D. 98.

to so large an extent as to deprive them of their privilege, because such an act would be in derogation of his original grant (*g*).

Mr. Justice Kay, in *Tilbury v. Silva* (*h*), held that a copyhold grant *primâ facie* passes the soil of a river *ad medium filum* in the same manner as a freehold grant. This, however, is doubtful. The presumption in the case of a freehold rests on the assumption that the lord of the manor granted the riparian land with the fishery and soil opposite to it, and such a presumption might well be made, as such a grant is highly probable; but as a copyhold must have been created before the statute of 18 Edward I., it would seem highly unlikely that the lord of a manor in times when rights of fishery were very valuable would, in granting out land to his base tenant, intend to grant him part of his valuable manorial fishery, and thereby to destroy the continuity of his fishing rights.

(*g*) Gould on Waters, sect. 186; Woolrych on Waters, 127, 166, 167, 237.

(*h*) (1890) 45 Ch. D. at p. 108.

CHAPTER XIII.

OF FISHERIES IN GROSS.

WOOLRYCH, treating of a fishery in gross says: "A fishery in gross is mentioned in some of our books as a distinct right, yet it does not seem very difficult to refer this privilege also to the more general sorts, either of several fishery or common of fishery. For if it be granted to a person exclusively of others, what is it but a several fishery? and if in common with other individuals, how does it differ from a common in gross, which is attached to the person in contradistinction to appendancy?"

Hale (a) states that fisheries, whether incorporeal or arising from the ownership of the soil, "may be granted in gross, as many religious houses had, or as parcel of or appendant to their manors, as both corporations and others have had." There exist many examples of this class of fishery. It is always a question of fact in every case, depending on the language of the original grant, or upon the evidence of user, from which the nature of that grant is to be inferred, whether the fishery in question is a fishery with the soil or an incorporeal hereditament, or whether it is an exclusive fishery or a mere right of common. Having, however, regard to the fact that in ancient times fisheries in tidal waters were almost always fished by means of weirs and fixed engines erected in the soil, it is to the last degree unlikely that a fishery in tidal waters granted in gross should be an incorporeal hereditament, a right which would not give the grantee power to fix his engines in the soil to obtain the profit of the fishery. If the grant or the user shows that the fishery in question is a fishery with the soil, then it is, although severed from the manor of which it may have been parcel, a several fishery in the ordinary sense, held in gross severed from the manor of which it was originally parcel. If it is a fishery without the soil, then it will be an incorporeal fishery in gross, a profit to be taken *in alieno solo*.

The case of *The Royal Piscarie of the Banne* (b), is an instance of a fishery in tidal water held in gross. It was an ancient fishery, which had never passed out of the possession of the Crown,

(a) De Jure Maris, p. 335.

(b) (1610) Davies, 55..

and was therefore a corporeal fishery with the soil, the soil of the river never having been granted to the lords of the riparian manors. It was a separate hereditament, soil and water, which had been in the possession of the Crown from the earliest times, and the attempt to show that the soil was in the lords of the riparian manors, and that the fishery therefore belonged to them, failed (c).

Fisheries in gross in non-tidal waters unconnected with any land or tenement were in ancient times rare, though examples of them can be shown.

In Minster Lovell in Oxfordshire the fishery belonged to the lord, except "*quod Willelmus Faber de le Legh debet piscari per cartas suas in prædicta aqua quando voluerit sine impedimento alicujus*" (d).

William de Valence, in 14 Edward I., A.D. 1286, confirmed to the prior of Rochester a right to fish in his fishery in the water of Tame whenever the prior or his successors or any of their monks were at their manor of Hadenham, and also on Wednesday in every week, with all nets and engines as they had in previous times done (e).

William le Graunt, in 14 Edward I., A.D. 1286, granted to Nicholas Ferembaud and his heirs common of fishery in his fishery of Rollesham with all engines for all kinds of fish except weirs (f).

The abbot of Furness, in 20 Edward I., A.D. 1292 (g), and the prior of Lancaster had a right of fishing in the King's water of Lone, the abbot having a right to two draughts and the prior to one.

The above are grants of common of fishery in gross.

By a deed dated September 14th, 28 Edward I., A.D. 1300 (h), the Earl of Cornwall, lord of the manor of Shillingford, granted to William de Bereford and his wife the whole of his free fishery in the whole of the Thames below Shillingford Bridge opposite to the grantee's lands there, setting out the bounds of it. This is a grant of a several fishery in gross, the whole interest being conveyed.

William de Lancaster, the lord of Kendall, gave to the prior of Coningshead the water of Ulverston and the fishery on both sides as far as the same flowed and reflowed, and the prior claimed the soil. That also is a grant of a several fishery in gross (i).

(c) See remarks on this case, Stuart Moore on Foreshore, p. 247.

(d) Hundred Rolls, II. 737, 3 Edw. II., A.D. 1274.

(e) Assize Rolls, No. 63, m. 6.

(f) *Ibid.*, m. 16 d.

(g) Placita de Quo Warranto, p. 386.

(h) Patent Roll, 29 Edw. I. m. 26.

(i) Coram Rege Roll, E., 34 Edw. I. ro. 40, A.D. 1306.

There is a grant by Gilbert Hammond to the abbot of Rivaulx, lord of the manor of Wirkeshale (*k*), of “totam partem piscarie de Tese quantum terra sua durat,” with power to take stone “per totam aquam de Wirkeshale” for the repair of the fishery.

This is a case of an incorporeal fishery in gross.

There are many cases of grants to monasteries and ecclesiastical bodies of fisheries in gross. In modern times, since fisheries have been eagerly sought after for purposes of sport rather than profit, very many fisheries are so held, having been purchased from the lords of manors; *e.g.* the fisheries in the Thames in the manor of Cookham and Bray (*l*), the fishery at Wraybury (*m*), the fishery in the Eden (*n*), the fishery in Wakering (*o*), and many others.

The Prescription Act, 2 & 3 Will. IV. c. 71, does not apply to a claim of fishery in gross in the waters of another (*p*). A claim to such a fishery in the waters of another, which is usually a claim to a common of fishery, cannot be established by showing user under the Act, though of course the evidence of user may be sufficient to raise the presumption of a grant, in accordance with the evidence.

(*k*) County Placita, York, No. 81, Y. B. 34 Edw. III. pl. 11, f. 207 b, A.D. 1360.

(*l*) *Smith v. Andrews*, [1891] 2 Ch. 678.

(*m*) *Hindson v. Ashby*, [1896] 2 Ch. 1.

(*n*) *Eccroft v. Coulthard*, [1897] 2 Ch. 554.

(*o*) *Att.-Gen. v. Emerson*, [1891] A. C. 649.

(*p*) *Shuttleworth v. Le Fleming*, (1865) 19 C. B. N. S. 657.

CHAPTER XIV.

OF DIVIDED FISHERIES AND THE ROYAL DRAUGHT.

Instances occur where the ownership of the profits of fisheries has become divided; e.g. the oyster fishery being in one owner, the fishery for flouting fish in another. The fishery for salmon or red fish in one, the fishery for other fish, as trout or herring, or white fish, in another. Such cases are exceptional, but it would seem that the division of the profits of the fishery does not in any way invalidate the claims of the respective owners to the exclusive fishery. They simply hold their respective shares as against all other persons. In *Seymour v. Charnock* &c., in 1771, the plaintiff proved a grant from Lord Clifford, the owner of the several fishery, with the exception of an oyster and a reservation of a right to take fish for the supply of his own table. It was objected that this was not a grant of a several fishery, which must be exclusive of the right of all other persons. The plaintiff was answered on this objection, but a rule for a new trial Lord Mansfield held "that in order to constitute a several fishery it is requisite that the party claiming it should so far have the right of fishing independent of all others, as that no person should have a co-extensive right with him in the subject claimed for where one person has such co-extensive right there is only a free fishery &c. But we think a partial independent right in another or a limited liberty does not derogate from the right of the general owner. Here Lord Clifford, being the general owner, devised to the plaintiff, reserving a particular species of fishing, viz. the oyster, which in its nature is to be exercised in a particular mode. A reservation is equal to a grant, therefore it brings it to the same question as if the plaintiff, being the general owner, had granted the sole right of fishing for oysters to Lord Clifford. And taking that to be the case, we think the plaintiff would still have a several fishery to all intents and purposes, except as to the taking oysters. As to the liberty reserved to Lord Clifford of taking fish for his own table, that is a mere limited liberty, and not co-extensive with the right of the plaintiff, who can take fish at all times and for all purposes."

It was decided that the fishery was a several fishery, and the rule for a new trial was granted.

It would therefore appear that the owner of a fishery may grant the right to take any particular kind of fish to another without trespassing or injuring his rights to the other fish as against all persons *in*.

In the case of *Boyes v. Allen* (2), in 1808, the action was for taking oysters in the river Crouch and in a fishery belonging to the manor of Burnham. The title and user was proved by leases and licences and acts of ownership. It was held by Heath, J., that the fishery might well pass as an appurtenance to a manor. The defendant proved that the public fished for floating fish and argued that this disproved the exclusive right claimed. It was argued that a fishery must be entire and it appeared from the licences and leases that the lords of the manor set up exactly the same pretension to the floating fish as they did to the ground fish, and that as it was lawful for the King's subject to catch the former so they might lawfully dredge for the latter. This was like the right of free warren. If that were claimed in a particular place, and it appeared that hares and partridges and not pheasants had always been killed there in the same manner as over the rest of the country, it seems impossible that the claim would be sustained. But Heath, J., said: "A right of fishing and a right of warren are not at all like each other. The one is divisible, the other is not. Part of a fishery may be abandoned and another part of more value may be preserved. The public may be entitled to catch floating fish in the river Burnham; but it by no means follows that they are justified in dredging for oysters which may still remain private property."

It is interesting to note that the title to this fishery as an exclusive fishery for all fish appears to have been established in *Lord Fitzwalter's Case* (3), in the King's Bench, in 25—26 Charles II., A.D. 1672, before Lord Hale, and the records relating to the manor show that the several fishery was parcel of the manor (4), and was a fishery with the soil, the oyster layings being identified as parcels of waste (5) *incorporeal* by copy of Court roll, as the fisheries in the case of *Att.-Gen. v. Hume* were. On a writ *scire facias* against Lord Fitzwalter, the lord of the manor of Burnham, the fishery was proved to be parcel of the manor. The fishermen petitioned

(2) *Boyes v. Allen*, 10 East, 104; 1 Mod. 107; 1 Burr. 510; 1 Camp. 106; 10 East 104; 1 Burr. 510; 1 T. R. 487; 1 M. & C. 102.

(3) 1 Mod. 107; 1 Camp. 106.

(4) 10 East 104; 1 Mod. 107.

(5) *Boyes v. Allen* is possession of the lord of the manor. See *Hale De Case Hume*, p. 272.

the King to establish the right of public fishing; but on reference to the judges of the King's Bench the petition was dismissed (*g*). It is difficult to understand in what manner the public acquired the right to fish for floating fish except by tacit license of the lord of the manor. The river had clearly been put in defence in a lawful manner. Mr. Justice Heath, in using the word "abandoned," could not have meant to imply that when the owner of a several fishery permits the public to fish for floating fish which were of no great value, but reserves his right to oysters, he, therefore, established the right of the public to fish. Such a thing as abandonment of a right of fishery cannot in law take place, nor can the public acquire the right once the fishery has been lawfully put in defence (*h*), and the public right to fish excluded. He must have meant that the lord had a perfect right to allow the public to fish, and that his doing so could not affect his right to the exclusive fishery for oysters. It would seem, therefore, that the right of the public to fish for floating fish in the river Crouch is exceedingly doubtful, notwithstanding the long user; but after enjoyment for so long a period a legal origin may be presumed to support it. There is also a portion of the Helford river in Cornwall where the oyster fishery is private, although the public freely fish for all other kinds of fish over it (*i*).

In the case of *Manuel v. Fisher* (*k*), in 1859, an attempt was made to set up the public right to trawl and take floating fish in Orford Haven, Suffolk, as against the corporation, who were owners of the fishery. At the trial the corporation proved their documentary title to the fishery. In 1792 the corporation had brought an action against certain persons for dredging oysters, and had established their right (*l*). In these proceedings they had not set up a right to floating fish; but subsequent to this they had asserted that right and had granted licenses to persons to take floating fish and had turned people off. Nevertheless there was a considerable body of evidence that the inhabitants of Orford and the public had fished without license and in the exercise of a claim of right. The jury found for the plaintiff, the lessee of the Corporation, and a motion for a new trial was refused.

At Hauxley, in Northumberland, there is a case of a divided fishery, the Duke of Northumberland is entitled to the salmon fishery, and a Mr. Widdrington has what is called the "Hauxley

(*g*) Privy Council Register, 19th Sept., 1675.

(*h*) See *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. 135.

(*i*) *Key v. Downing*, (1870) 11 C. C. C. 580.

(*k*) (1859) 5 C. B. N. S. 856.

(*l*) *Mayor of Orford v. Richardson*, (1791) 1 Anstr. 231; 4 T. R. 437; 2 H. Bl. 182.

White Fishery" and the right of taking bait from the shores. The Widdrington title was established in a suit in Chancery in 1737 (*m*).

In a fishery in the Leven in Lancashire in 25 Edward III., A.D. 1351, the prior of Conishead owned the fishery, but the tenants of the vill of Ulverston had the right to fish with "haues," and also to fish in all the sands for flounders and other fish except salmon. The prior sued them for taking salmon, and succeeded (*n*).

In the Colne the right to take floating fish has been leased separately from the right to take oysters by the corporation as owners of the fishery. Such cases are common, and there is no reason why the owner of a fishery, who clearly may subdivide it locally by grant to different persons, may not also subdivide the profit of it by granting or leasing the different species of fish within it without derogating in any way from his general title to the fishery (*o*).

Of the Royal Draught.

Lord Hale (*p*) points out that the King by his prerogative has another interest in rivers tidal and non-tidal, viz., an interest of jurisdiction, in reference to common nuisances in or by rivers—in short, a jurisdiction of conservancy. It is not within the scope of this work to treat of conservancy generally, but there appears to have been a further reservation upon grants of some fisheries, viz., a right to take a limited kind of fishing throughout the whole of a river by the officer of the King as conservator, or the officer of the grantee of such conservancy, who in some rivers appears to have had and exercised a right to take a net down the river through all the private fisheries in it at stated periods, generally once or twice a year. We find this right exercised upon the Thames, the Arun in Sussex, and the Frome in Dorsetshire. Possibly it may have existed in other rivers. When this right was claimed as a profit to be taken in respect of the exercise of the jurisdiction of conservator, or whether it was a right reserved by the owner of the fisheries in the entire river upon the granting out of separate fisheries to individuals, seems questionable. On the Thames the right was claimed by the King's water bailiff and conservator as a fee draught (*q*). He had what was called a fee draught once a year in

(*m*) Cha. Pro. 1714—1758, Winter Ble. 932; *Widdrington v. Kirton*, Chancery Decree Book, 1737.

(*n*) D. of L. Assize Roll, No. 1 (xxv. s. 1).

(*o*) *Seymour v. Courtney*, (1771) 5 Burr. 2815; *Powell v. Hoffmann*, (1851) 8 L. R. Ir. 132.

(*p*) *De Jure Maris*, cap. ii.

(*q*) Exch. Dep. Miscell. No. 1143, 930, 2184, 17 Jas. I.; Q. R. Exch. Dep. Hil. 17 Jas. I. No. 74; Exch. D. & O. Series III. vol. 28, f. 237.

every man's water and fishing, being an ancient annual and certain profit that cometh to him by reason of his office. In the Arun the Earl of Arundel, who was originally owner of the entire river before portions of its fisheries were granted out by him with various manors on the banks, claimed and exercised the right to fish the whole river through all the manorial fisheries in it as lord paramount. On the Frome in Dorsetshire a right to a royal draught is said to have been held by the abbot of Bindon, which extended down the non-tidal portion of the river. It was subsequently held by the family of Weld. In the tidal part of the Frome the corporation of Wareham formerly claimed and exercised a similar right, also called a "royal draught," though the fishery belonged to the Crown, and subsequently to the reign of Queen Elizabeth to the Crown's grantees (r).

In the manor of Long Parish, in Hampshire, the lord of the manor was entitled to three royal draughts, in case the lord should come to the said river in person (s). There existed a similar right in the manor of Ringwood on the Avon (Hampshire).

A right of this nature is probably either a relic of the right of conservancy or a mere reservation by the lord of the fishery for his own use and enjoyment. Of late years such rights have fallen into disuse.

(r) Exch. B. & A. Dorset, Car. I. No. 56; Exch. Dep. Mich. 13 Car. I. No. 20; Exchequer Decree Books.

(s) Exch. Dep. E. 13 Will. III. 27.

CHAPTER XV.

OF FISHERIES IN PONDS AND LAKES, AND THE OWNERSHIP OF THE SOIL.

THE ownership of the soil, and the right of fishery arising from it in ponds and the smaller lakes, is *primâ facie* vested in the owner of the property or the manor in which they are situate (*a*). When the pond or lake lies between two manors or two properties, the *medium filum* is usually the dividing line of the soil, and the right of fishery will follow this boundary line (*b*), but this is not always the case.

Doubts, however, have arisen with regard to the larger lakes, which are navigable, and are public highways, as to whether the soil of them is vested in the Crown or in the riparian proprietors, and also as to whether the public have a right to fish in them (*c*). There appears to be no authority which in any way decides what are small and what large lakes in this respect. The doubt appears first to have arisen in the case of *Marshall v. Ulleswater Co.* in 1863 (*d*), where Mr. Justice Wightman says: "Whether the soil of lakes, like that of fresh waters, *primâ facie* belongs to the owners of the land or of the manors on either side *ad medium filum aquæ*, or whether it belongs *primâ facie* to the King in right of his prerogative (Com. Dig. Prerogative, D. 50, Hale, De Jure Maris, c. 1), it is not in this case necessary to determine; for it is clear upon the authorities that the soil of land covered with water may, together with the water and the right of fishing therein, be specially appropriated to a third person whether he have land or not on the borders thereof or adjacent thereto" (*e*). In this case the plaintiff claimed to be owner of a several fishery in part of Ulleswater Lake, and tried his title to it as belonging to the barony of Barton and its

(*a*) Paterson's Fishery Laws, p. 2; *Clarke v. Mercer*, (1859) 1 F. & F. 492; *Cornwell v. Saunders*, (1862) 32 L. J. M. C. 6.

(*b*) Phear, p. 1; Woolrych, p. 121; *Bristow v. Cormican*, (1877) 3 App. Cas. 648; Ir. R. 10 C. L. 398, 412.

(*c*) *Reg. v. Burrow*, (1870) 34 J. P. 53; *Bloomfield v. Johnston*, (1868) 8 Ir. L. R. C. L. 68; *Perry v. Thornton*, (1888) 23 L. R. Ir. 402.

(*d*) (1863) 3 B. & S. 732.

(*e*) This dictum was disapproved of by Lord Blackburn in *Bristow v. Cormican*, (1877) App. Cas. 661.

sub-manors, showing that the barony extended to and included part of the lake, and by virtue of his ownership of the fishery he claimed the soil on which a pier had been built by the defendant. The jury found for him, and an application to enter the verdict for the defendant was refused, the Court deciding that the ownership of the fishery *primâ facie* imported the ownership of the soil. The fishery was held by a grant together with livery of seizin, reserving a quit rent of 4*l.* a year to the lord, and the Court held that in the absence of evidence to the contrary, such a grant must be taken to convey a corporeal and not an incorporeal inheritance, as feoffments with livery of seizin and the reservation of a quit rent are not appropriate to an incorporeal estate. See also *Att.-Gen. v. Emerson*, (1891) A. C. at p. 654.

The question arose again in *Bloomfield v. Johnston* (*f*), in 1867, with regard to the large lake of Lough Erne in Ireland. In this case it was decided that the public have not of common right the right of fishery in large inland lakes in which the tide does not flow and reflow, although they are navigable (*g*), and the Court declined to extend the presumption that the bed and soil of the stream belongs to the riparian proprietors *ad medium filum aque* to a large inland lake like Lough Erne. The soil of the lough was clearly in the Crown, and the King granted to the plaintiff's predecessors "libera piscaria" in Lough Erne, making at and about the same date several other similar grants to other persons, showing clearly that the Crown was granting as owner of the soil rights of common of fishery of an incorporeal nature only (*h*).

The case of *Bristow v. Cormican* (*i*), in 1878, was an action of trespass for taking fish in Lough Neagh, a fresh-water lake in Ireland, over the whole of which the plaintiff claimed a several fishery under a grant of a fishery and of islands in the lake from King Charles II. The fishery described in this grant did not clearly include the whole lake, and no evidence was produced as to the title of the Crown to the soil and fishing of the lake. The issue was not whether a lake in which the tides of the sea had never flowed was a public navigable inland sea in which the right of fishing was common, but whether upon the royal grant, coupled with evidence of certain subsequent acts of possession in other parts of the lake, and in the absence of evidence of the extent of the Crown's ownership or possession at the time of the

(*f*) (1868, Ir. R. 8 C. L. 68.

(*g*) See also *Pery v. Thornton*, (1888) 23 L. R. Ir. 402.

(*h*) See *ante*, p. 59.

(*i*) (1877) 3 App. Cas. 648.

grant, the jury were properly directed to find for the plaintiffs, or whether the case should have been submitted to them on the evidence as to the plaintiffs' title and right to maintain the action. The Lord Chancellor said: "The Crown has no *de jure* right to the soil or fisheries of a lough like Lough Neagh. Lough Neagh is, as your Lordships are aware, the longest inland lake in the United Kingdom, and one of the largest in Europe. It is from fourteen to sixteen miles long, and from six to eight miles broad. It contains nearly 100,000 acres; but though it is so large, I am not aware of any rule which would, *prima facie*, connect the soil or fishings with the Crown, or disconnect them from the private ownership either of the riparian proprietors or other persons. Charles II., or some of his predecessors, may have become possessed of the lough and its fishings, either by grant, forfeiture or otherwise; but it would be a legitimate and necessary subject of inquiry how and from whom, and subject to what conditions or qualifications this possession or proprietorship was obtained." Lord Hatherley, referring to the difficulties attending the case, because of the lack of information as to the manner in which the Crown acquired title to the property and the extent of that title, said: "It is of very great importance in this case to have all the circumstances of the case before us, and to see how it was that the property became vested in the Crown, of which we have no history at all. Clearly no one has a right to say that it became vested in the Crown because it belonged to nobody else. This is an inland lake, and, therefore, it is not a portion of land belonging to the Crown by reason of its being on the shore of the sea, or a navigable strait or river." Lord Blackburn said: "The property in the soil of the sea and of estuaries, and of rivers in which the tide ebbs and flows, is *prima facie* of common right vested in the Crown, but the property of dry land is not of right in the Crown. It is clearly and uniformly laid down in our books, that where the soil is covered by the water, forming a river in which the tide does not flow, the soil does of common right belong to the owners of the adjoining land; and there is no case or book of authority to show that the Crown is of common right entitled to land covered by water, where the water is not running water forming a river, but still forming a lake." Referring to the decision in *Marshall v. Ulleswater Steam Navigation Co.*, the learned Judge further said: "This is the only case cited, and, as far as I can find, the only case which exists, where there is even a suggestion that the Crown of common right is entitled to the soil of lakes. Neither the passage in Comyns, nor that in Hale *De Jure Maris*, cited by Mr. Justice Wightman, gives any countenance to such a doctrine. But it does appear that the learned Judge did not

think that the law as to land covered by still water was so clearly settled to be the same as the law as to land covered by running water, as to justify him in unnecessarily deciding that it was the same. . . . I own myself to be unable to see any reason why the law should not be the same, at least where the lake is so small, or the adjoining manor so large, that the whole lake is included in one property. Whether the rule that each adjoining proprietor, where there are several, is entitled *usque ad medium filum aque* should apply to a lake is a different question. It does not seem convenient that each proprietor of a few acres fronting on Lough Neagh should have a piece of the soil of the lough, many miles in length, tacked on to his frontage. But no question arises in this case as to the rights of the riparian proprietors amongst themselves, for no title is made by either party through any one as riparian owner. . . . It is, however, necessary to decide whether the Crown has of common right a *prima facie* title to the lake; I think it has not. I know of no authority for saying it has, and I see no reason why it should have it."

This case is not a decision that the Crown was not possessed of the soil of Lough Neagh. That was not decided, because the facts were not before the Court, and a new trial was ordered. "All that was decided was that a mere general grant by the Crown of all the lough called Lough Neagh and Toone, together with the fishings and soil thereof," without proof of a sufficient possession of the fishing of the entire lough, would not suffice to establish the title thereto, and when there is no evidence of acts of possession by the grantee at the particular part of the lake which is the place in dispute, can have no effect.

There is no *prima facie* presumption that the Crown is the owner of the soil of inland lakes in the same manner that it is supposed in law to be owner of the foreshore; because the legal fiction of the Crown's title to foreshore was not invented till the time of Elizabeth, and was at first based upon the right which the Crown was held to have in the sea and its bed when affected by the tidal influence; but afterwards the foreshore was claimed as being "part of the waste dominions of the Crown not granted out." Nevertheless, the Crown must in the origin of things have been the owner of the soil and fishery of all lakes, large and small, and it may well have been that it had never granted out the soil of Lough Neagh or any portion of it, which would account for there having been no history of the Crown's title. It is a question of fact in every case whether or not the Crown in granting out the fisheries in lakes has conveyed the soil or not. In the case of Lough Erne the soil was not conveyed, but only certain rights of common of fishery. In the cases of

Windermere, Ulleswater, Hornsea Mere, Bassenthwaite Lake, Derwentwater, Brecon Mere, Alresford Pond (*k*), and numerous other lakes, small and large, fisheries exist which are clearly traceable to grants by the Crown, and the soil goes with the fisheries (*l*). That there is no public right of fishing in lakes which are navigable is clearly settled (*m*). The presumption that the riparian owners on the sides of lakes have the fishing to the middle of the lake can hardly be said, after the decision of *Bristow v. Cormican*, to exist. When we find a riparian owner proving the exercise of the right of fishery in a lake, such right is more probably referable to a grant from the owner of the lake of a right of common of fishery, as in *Bloomfield v. Johnston*; for it is improbable to the last degree that the owner of a lake, who was also owner of the riparian land, would have intended to grant the soil to the mid-stream and to create a very inconvenient fishery in his lake; but he might, and probably often did, grant the riparian land, together with a right to fish in the lake in common with him (*n*). The presumption of a grant of such a right upon evidence of user would be natural and reasonable.

(*k*) *R. v. Alresford*, (1786) 1 T. R. 358.

(*l*) In Wittlesea Mere the rights of fishing were held in common. The abbot of Ramsey held a right of fishing with three boats, the abbot of Thorney with two and a half, the abbot of Peterborough with two, and the Earl of Cornwall with three and a half, the soil probably remaining in the Crown (Hundred Rolls, II. 646).

(*m*) *Bloomfield v. Johnston*, (1868) 8 Ir. L. R. C. L. 68; *Perry v. Thornton*, (1888) 23 L. R. Ir. 402.

(*n*) There are several instances of grants by the lord of the barony of Kendal of rights to fish with boats and nets in Lake Windermere.

CHAPTER XVI.

OF FISHERIES IN CANALS AND ARTIFICIAL WATERCOURSES.

IN canals and artificial watercourses the right of fishery is, of course, *primâ facie* incident to the ownership of the soil, and it is competent for canal companies to let their rights of fishery (where they have them) if they see fit (*a*).

In canals the rights of fishery are generally reserved to the owners of the soil through which the course is to be made by the Acts of Parliament which authorise the making of the canal or in the conveyance of the land required for the canal. In rivers which are turned into canals the reservation is usually found in the Acts, and the question of the ownership of the fishery will depend upon the construction of the particular Act and the evidence leading up to such construction (*b*).

When a river has been made navigable, and the Act of Parliament empowering the work is silent as to the rights of fishery, the Act does not affect the ownership of the soil or the fishery. These rights remain as they existed before the Act (*c*).

Where cuts have been made to shorten the bends of a river the right of fishery will, unless there is some special provision to the contrary, be vested in the owner of the soil through which the cut has been made.

There is no right in the public to fish in canalised rivers on the ground that they are navigable, the public right being strictly limited to waters subject to the influence of the tide (*d*).

a) Woolrych, p. 65 ; Coulson & Forbes, pp. 280, 373.

b) *Grand Union Canal v. Ashby*, (1861) 6 H. & N. 394 ; *Snape v. Dobbs*, (1823) 8 Moo. 23 ; 1 Bingh. 202 ; Paterson, p. 66.

c) *Hargreaves v. Diddams*, (1875) L. R. 10 Q. B. 582.

d) *Hargreaves v. Diddams*, (1875) L. R. 10 Q. B. 582 44 L. J. M. C. 78 ; 32 L. T. 600 ; *Musset v. Burch*, (1876) 35 L. T. N. S. 486.

CHAPTER XVII.

OF FISHERY IN RELATION TO NAVIGATION.

PRIVATE rights of fishery and the public right of navigation co-exist in the tidal and in some non-tidal waters and in lakes. They are wholly distinct from and have no relation to one another. One is a right of property, the other is the right of navigation. The right of navigation is simply a right of way (*a*). The public right of navigation is paramount to the right of fishery with certain qualifications. It must be exercised with due regard for the rights of riparian proprietors and owners of fisheries (*b*). The right of navigation, while paramount, is not exclusive, and cannot be exercised to the unnecessary or wanton destruction of private rights or property when both can be freely and fairly enjoyed (*c*). In an anonymous case in 1808, when a ship was moored to a rock lying within the plaintiff's fishery, where she delivered her cargo, and by so doing prevented the plaintiff from taking as many fish as he otherwise would have done, Wood, B., said: "A navigable river is a public highway, and all persons have a right to come there in ships and to unload, moor, and stay there as long as they please. Nevertheless, if they abuse that right so as to work a private injury, they are liable to an action. The question therefore will be whether the defendant has abused his right. The privilege of the plaintiff must be subservient to the right of the public. . . . The defendant had a right to moor and remain where his ship lay, as long as convenience required; yet if he acted wantonly and maliciously, for the purpose of injuring the fishery, the plaintiff is entitled to a verdict, but not otherwise" (*d*).

In the case of *The Mayor of Colchester v. Brooke* (*e*), the master of a vessel navigating the river towards Colchester, missed the tide at a place called "The Hound," where there was an oyster bed belonging to the corporation, the owners of the fishery in the river.

(*a*) *Orr-Ewing v. Colquhoun*, (1877) 2 App. Cas. 839.

(*b*) Gould on Waters, sects. 87, 88, 89.

(*c*) *Post v. Mann*, 1 South. (N. Y.) 61; Gould on Waters, sect. 89.

(*d*) *Anon.*, (1808) 1 Campb. 517, n.

(*e*) (1845) 7 Q. B. 339.

The vessel grounded on the oysters, doing damage. For this he was held not to be responsible, but it appeared that instead of properly mooring his vessel, so that she did not swing round, he let her lie to an anchor and she did swing round and grounded on the oysters, doing damage which with better care might have been avoided; for this he was held responsible on the ground that he took no reasonable precaution to prevent unnecessary injury (*f*).

In the case of *The Octavia Stella* (*g*), in 1867, a ship in charge of a compulsory pilot was at high water brought into and anchored by the pilot in a river in which there were oyster beds, the existence of which was known to the pilot. The place where she was anchored was not the usual and customary place for vessels of her size and draught to anchor in. At low water she grounded and thereby did damage to an oyster bed. On notice of the existence of the oyster bed being given to the master, he took all reasonable means to remove his ship as speedily as possible. The pilot was held liable on the ground of negligence, but the ship was not liable, because the master's duty on receiving notice of the existence of the oyster bed was to take all reasonable measures—not extraordinary measures—to remove his ship, and this he had done (*h*).

With regard to the general right of navigation, Lord Hannen said: "The rights of all vessels are not co-extensive. It may be reasonable and right that a small vessel should go up to the farthest point she can reach in order to give the public the benefit of the public way. But the same right does not exist in the case of a large vessel, and she is not entitled under extraordinary circumstances to try to get to a place where large vessels are not accustomed to go, and where there is no accommodation for loading or unloading them. Now if the *Octavia Stella* had been a suitable vessel for navigating these upper and shallow waters, and in the course of her navigation it had become necessary to take the ground, that would not in itself be negligence which would have made the person allowing the vessel to ground liable. He would be entitled to say, 'I was only using this passage in the ordinary way with prudence, and so as not to injure anybody else except in so far as that might be the necessary consequence of my only doing what I had a right to do.'"

On 16th December, 1896, a similar question was decided in the case of *Addison v. Hussey* (*i*) before Kennedy, J. A barge was anchored on an oyster bed in the river Crouch, at Burnham, in Essex. The master, on being warned that he was doing damage to

f *Mayor of Colchester v. Brooker*, (1845) 7 Q. B. 339.

g 1887) 6 Asp. M. C. 182; 57 L. T. 632.

h See also *Att.-Gen. v. Wright*, [1897] 2 Q. B. 318.

i Not reported.

the oysters, refused to remove his vessel and remained there doing damage. The owner was held responsible.

In the case of *The Swift (k)*, a foreign vessel was navigating over the oyster grounds at Whitstable, and before she grounded on them was warned by the watchmen to keep off the grounds, but disregarded the warning and grounded, doing damage to the oysters. She was held to have been improperly navigated and made liable for the damage done, following the principle laid down in the Colchester case and *The Octavia Stella*.

The law in America is stated by Gould on Waters, sect. 87, as follows: "The master of a vessel is not required to shorten sail, or yield the channel to a fishing net, but may lawfully prosecute his voyage, or approach the shore at any point, without regard to seines or nets drawn across the way (*l*). If, under the pretence of exercising the right of navigation, he turns out of his course to run upon a net, or lies in wait until it is spread, and then crowds sail to reach it; or, if he unnecessarily anchors on a fishing ground, or loiters about it to prevent its use as such, or does not change his course when he can do so without prejudice to the reasonable prosecution of his voyage, and has warning that he is approaching the net, he is answerable in damages, because the right of navigation, though superior, does not take away the right of fishery, and cannot be so abused as to excuse wantonness or malice" (*m*).

On the other hand, user of a fishery may amount to a nuisance to the right of navigation as if unreasonably large masses of oysters be planted or deposited in the bed of a navigable river they are a nuisance so far as they obstruct the navigation (*n*). So also the building of weirs or enhancing of old weirs whereby the navigation of vessels is obstructed (*o*).

The result of the authorities appears to be that both these rights of fishery and navigation, where they conflict, must be used reasonably and with due care not to wantonly or negligently prejudice the right of navigation or injure the owner of the fishery. What amounts to punishable negligence by the person exercising

(*k*) *The Swift*, [1901] P. 168.

(*l*) *Anon.*, (1808) 1 Camp. 517, n.; *Mayor of Colchester v. Brooke*, (1845) 7 Q. B. 339; *Post v. Muen*, 1 South. (N. Y.) 61; *Jones v. Keeling*, 1 Jones (N. C.) 299; *Davis v. Jenkins*, 5 South. (N. Y.) 290; *Cobb v. Bennett*, (1874) 75 Penn. St. 326; *Moulton v. Libbey*, (1854) 37 Maine, 472; *Flanagan v. Philadelphia*, (1862) 42 Penn. St. 219, 228; *Mason v. Mansfield*, (1835) 4 Cranch. C. C. 580; *The City of Baltimore*, (1872) 5 Ben. 474; *Commonwealth v. Chapin*, 5 Pick. 199.

(*m*) *Post v. Muen*, 1 South. (N. Y.) 61, 62; *Cobb v. Bennett*, (1874) 75 Penn. St. 326; *Jones v. Keeling*, 1 Jones (N. C.) 299.

(*n*) *Mayor of Colchester v. Brooke*, (1845) 7 Q. B. 339.

(*o*) Hale, De Portibus Maris, 85; Woolrych, p. 222.

the right of navigation on the one hand, and what amounts to unnecessary or unreasonable obstruction to that right on the other hand, must always depend upon the facts of the case.

The navigation of vessels when in the vicinity of fishing-boats is regulated by the Collision Regulations of 1897, made by Order in Council in accordance with the provisions of sect. 418 of the Merchant Shipping Act, 1894. It is provided by the 26th article of these regulations that sailing vessels under weigh are to keep out of the way of sailing vessels or boats fishing with nets or lines or trawls, but the rule does not give fishing-boats the right of obstructing a fair way. By the 20th article steam vessels have to keep out of the way of all sailing vessels whether fishing or not (p).

(p) For further information, see "The Rules of the Road at Sea," 3rd edition.

CHAPTER XVIII.

OF FISHING-PATHS.

THE owner of a fishery has not of necessity a right to land nets or walk upon the bank of the river for the purpose of fishing without the assent of the owner of the freehold (*a*). In cases of grants of fisheries and of grants of land adjoining fisheries it will be a question of construction whether the right to use the banks for a fishing-path has been actually or impliedly granted or actually or impliedly reserved. In cases of claims by prescription it will depend upon the evidence of user (*b*).

If the fishery in respect of which the path is claimed is a fishery with the soil, the right of fishing-paths may be prescribed for as appurtenant; but if the fishery is an incorporeal fishery there appears to be difficulty in so prescribing. In a recent case of *Hanbury v. Jenkins*, respecting a fishery in the river Wye (*c*), Mr. Justice Buckley found for a fishing-path as appurtenant because he thought that the soil went with the fishery; but assuming he was wrong on that point, and the fishery was incorporeal, he thought that on the construction he put on a somewhat obscurely worded passage in Coke upon Littleton (*d*), the case appeared to come within the exception to that authority that an incorporeal hereditament could not be appurtenant to another incorporeal hereditament, because the right of way for the purpose of fishing itself so agreed in nature and quality as to be capable of union without incongruity. The evidence of user of the path was strong.

Where a right of way for the purpose of fishing has existed over land afterwards inclosed under the power of an Inclosure Act, it would seem that it will be held to have been extinguished by the operation of the Inclosure Act, unless the way is set out in the award of the commissioners (*e*).

(*a*) Woolrych on Waters, pp. 163, 167; *Ipswich v. Brown*, (1581) Savil. 11.

(*b*) *Gray v. Boud*, 1821, 2 B. & B. 667; 5 Moore, 527; Paterson, Fishery Laws, p. 30; *R. v. Ellis*, (1813) 1 M. & S. 665; *Blundell v. Catterall*, (1821) 5 B. & Ald. 268, per Holroyd, J.; Gould on Waters, sect. 100; *Shuttleworth v. L. Fleming*, (1865) 10 C. B. N. S. 687. See also *Larkwar and Ford*, (1586) Godb. 111, per Ashurst, J.

(*c*) [1901] 2 Ch. 401.

(*d*) Co. Litt. 121 b. 122 a.

(*e*) *Ecroyd v. Coulthard*, [1897] 2 Ch. at p. 572.

In tidal waters fishermen may go upon the foreshore to fish and may draw their nets upon the beach above ordinary high water mark; but in the absence of prescription or grant may not fix stakes to dry nets or do any act upon land above the ordinary high water mark (*f*).

The public have no right to go upon the banks of rivers which are private property to fish, although they may have the right to fish in the river (*g*). If the public have gone upon the banks this has been by sufferance of the landowner, not by virtue of any right, and there would seem to be no length of time by which the public could acquire this right. At any time the landowner may forbid it and proceed against the persons as trespassers (*h*). They may have the right of way to pass and repass, but not for the purpose of fishing (*i*).

In the counties of Devon, Somerset, and Cornwall, by statute 1 James I. c. 23, herring, pilchard, and seine fishers have the right to land and go upon the lands adjoining the coasts to direct the operations of fishing and manage the nets and seines.

In letting lands adjoining a fishery care must be taken to reserve a right of path for the purpose of fishing and preserving the fishery, for if there be no such reservation the owner of the fishery will have no right to go upon the land (*k*).

(*f*) *Gray v. Bond*, (1821) 2 B. & B. 667; 5 Moore, 527; *Blundell v. Catterall*, (1821) 5 B. & Ald. 268; Woolrych, p. 163, 164, 167. As to herring fishing see 11 Geo. III. c. 31, *post*, p. 97.

(*g*) Y. B. Trin. 15 Edw. IV. f. 29, pl. 7; *Ball v. Herbert*, (1789) 3 T. R. 253.

(*h*) Oke's Fishery Laws, p. 6.

(*i*) See *Harrison v. Duke of Rutland*, [1893] 1 Q. B. 142.

(*k*) Paterson's Fishery Laws, p. 67; *Davies v. Jones*, (1902) 18 T. L. R. 367; Oke's Game Laws, p. 118.

CHAPTER XIX.

OF THE PUBLIC RIGHT OF FISHERY AND ITS LIMITS.

ALL British subjects have the right to fish in the high seas outside the territorial limits of a country for all kinds of fish, in common with the rest of the world, unless their right has been restricted by statute (a), or by convention or treaty with foreign states. When disputes arise between fishermen as to the mode of fishing in the high seas, they are, if the locality is not the subject of legislation or treaty, regulated by the custom which is in vogue at the place of the dispute (b). Such custom, to be binding, must be clearly understood by all those who frequent the locality in question (c). There are at present conventions in force with regard to the North Sea (d), the English Channel (e), Newfoundland (f), the North Pacific seal fisheries (g), and Greenland seal fisheries (h).

In tidal waters, estuaries, and arms of the sea below the high water mark of ordinary tides situate within the limit of the kingdom, as fixed by the Territorial Waters Jurisdiction Act, 1878, the public, as subjects of the realm, have the right to fish to the exclusion of the subjects of all foreign powers, except in such parts of those tidal waters as have been legally appropriated as private fisheries. In such parts, so legally appropriated and granted to a subject, no public right exists, or can exist, or can be acquired by the public by user, however long existing; and such parts being put in defence as against the public are in the same condition as regards any public right of fishing as the non-tidal waters.

(a) British subjects may be forbidden to trawl within thirteen miles of the coast of Scotland: Sea Fisheries Regulation (Scotland) Act, 1895, s. 10; *Fennings v. Lord Grenville*, (1808) 1 Taunt. 241.

(b) See Paterson's Fishery Laws, pp. 6 *et seq.*; *Aberdeen Arctic Co. v. Sutter*, (1862) 4 Macq. App. Cas. 355; *Fennings v. Lord Grenville*, (1808) 1 Taunt. 241; 9 R. R. 760; *Young v. Hichens*, (1844) 6 Q. B. 606; D. & M. 592; *Littledale v. Scuth*, (1788) 1 Taunt. 243 a; 9 R. R. 762; *Hogarth v. Jackson*, (1827) M. & M. 58; *Skinner v. Chapman*, (1827) M. & M. 59, n.

(c) *Aberdeen Arctic Co. v. Sutter*, *ubi supra*.

(d) Sea Fisheries Acts, 1883, 1891, 1893.

(e) Sea Fisheries Acts, 1843, 1868, 1883.

(f) Treaty of Washington Act, 1872.

(g) Behring Sea Award Act, 1894; Seal Fisheries (North Pacific) Act, 1895.

(h) Seal Fisheries Act, 1875.

The public right of fishing in tidal waters has been regulated and limited in many particulars by statute with regard to the methods of capture of fish, the seasons of fishing, the use of particular engines, &c., as will appear later.

As incident to the right of public fishery in tidal waters there exists the right of fishing over the foreshore when it is not within the limits of a several fishery, and of laying lines, drawing nets (not being of the nature of fixed engines) over it, and presumably of drawing nets on the beach above ordinary high water mark in the act of fishing. It does not extend to the right of fixing stakes or fixed engines on the foreshore nor of drawing up boats above high water mark (except in case of peril and necessity), and leaving them there for future use (*i*). Such rights would be inconsistent with the right of private property. They may, however, be gained by custom by fishermen of a particular locality (*h*). It has been held that where there exists no several fishery, *prima facie* every subject may take shell-fish found upon the foreshore in the possession of a subject; but, *semble*, there is no such right to take fish shells (*l*). This case is not clearly reported, and is of doubtful authority. There is considerable doubt as to whether mussels, which have been held in Scotland to be *partes soli* (*m*), are or are not subject to the right of public fishery. It is also questionable whether cockles, which can only be taken by digging in the soil, are within the definition of fish which the public have the right to take from foreshore in the possession of a subject.

The public right of fishing must be exercised reasonably, and in accordance with the law and the provisions of the statutes with respect to it. A person duly licensed to fish in the upper waters of a tidal river may maintain an action against a person who, by unlawfully fishing in the lower waters of the river within limits prohibited by statute, had caused damage to him in the exercise of his right to fish (*n*).

In the case of *The Truro Corporation v. Rowe* (*o*), Mr. Justice Wills held that proof of an immemorial practice by oyster fishermen to lay oysters down, to cleanse and get rid of impurities contained in them, on part of the foreshore and bed of the river Fal,

(*i*) *Ward v. Creswell*, (1741) Willes, 265; *Hebster v. Raishleigh*, (1889) 61 L. T. N. S. 477; *Att. Gen. v. Wright*, [1897] 2 Q. B. 318.

(*h*) Y. B. 13 Hen. VIII. 15 b; 8 Edw. IV. pl. 30; Hale de Port. p. 86; Y. B. 15 Edw. IV. f. 29, pl. 7; *Padwick v. Knight*, (1852) 7 Ex. 861; *Blandell v. Catterall*, (1821) 5 B. & Ald. 268; 24 R. R. 353. See also *Atkins v. Stephen*, (1876) 1 App. Cas. 456.

(*l*) *Baggett v. Orr*, (1801) 2 B. & P. 472.

(*m*) *Duchess of Sutherland v. Watson*, (1868) 6 Ct. of Sess. Cass., 3rd Ser. 199.

(*n*) *Whelan v. Hewson*, (1871) Ir. R. 6 C. L. 283.

(*o*) [1901] 2 Q. B. 870; [1902] 2 K. B. 709.

may be justified as against the owner of the foreshore and bed as being incidental to the enjoyment of the public right of oyster fishing both by custom and by common law; but it was held on appeal that fishermen have no right to appropriate a portion of a foreshore for the storage of oysters to the exclusion of the rest of the public, and have no property in the oysters so deposited.

In the counties of Somerset, Devon, and Cornwall seine fishers have the right to go upon private land to view the fish and direct the operations of the seine boats, &c., by a statute 1 James I. c. 23, and persons employed in white herring fisheries may land their stores, nets, fish, &c., on any waste or uncultivated ground within one hundred yards of the highest high water mark (*p*).

The limit seawards of the public right exclusive of subjects of foreign states is the limit of the kingdom as fixed by the Territorial Waters Jurisdiction Act, 1878; the limit landwards, where the public right ends and the private right of owners of non-tidal fisheries commences, has given rise to much discussion. In non-tidal waters, viz., in rivers and lakes, ponds, canals, and artificial watercourses, the public have not, and cannot acquire by any means, a right to fish as members of the public. The right of the public depends wholly upon the existence of tidal influence at the spot in question. Notwithstanding that the river or water may have been navigable and navigated from time immemorial, if it is not also tidal there can be no right in the public to fish, not even when it is proved that they have so fished from a period beyond the time of living memory (*q*).

There was formerly an erroneous impression that where a river was a public navigable river, although not tidal, the public had a *prima facie* right to fish. It was, in fact, contended that the navigability of the river imparted the public right, and that it was not necessary that the river should be also tidal (*r*). In one case, the claim of the public to fish was made as to the river Itchen, a non-tidal river made navigable by means of a canal system (*s*). The point has been definitely decided, and is summed up by Grove, B., and Huddleston, B., thus: "The distinction is clear upon the whole

(*p*) Stat. 11 Geo. III. c. 31 (1771).

(*q*) *Murphy v. Ryan*, (1868) Ir. R. 2 C. L. 143; *Hargreaves v. Diddams*, (1875) L. R. 10 Q. B. 582; *Mussell v. Birch*, (1876) 35 L. T. N. S. 486; *Hudson v. McRae*, (1863) 4 B. & S. 585; *Pearce v. Scotcher*, (1882) 9 Q. B. D. 162; *Smith v. Andrews*, [1891] 2 Ch. 678; *Blount v. Layard*, *Ibid.*; *Neill v. Duke of Devonshire*, (1882) 8 A. C. 135; *O'Neil v. M'Erlaine*, (1864) 16 Ir. Ch. R. 280; *Reg. v. Burrow*, (1870) 34 J. P. 53; *Pery v. Thornton*, (1888) 23 L. R. Ir. 402; *Blower v. Ellis*, (1886) 50 J. P. 325; *Mickelthwait v. Vincent*, (1892) 67 L. T. 225.

(*r*) *Smith v. Andrews*, [1891] 2 Ch. at p. 696, per North, J.

(*s*) *Hargreaves v. Diddams*, (1875) L. R. 10 Q. B. 582.

current of authorities in this country and in Ireland that when a river is navigable *and* tidal the public have a right to fish there as well as to navigate it; but that when it is navigable but *not* tidal, no such right exists" (t).

It is therefore now settled law that the right of the public to fish depends upon the water being tidal and not comprised within the limits of any several fishery. This is founded on the theory that the soil of the sea and tidal water up to the flow of the ordinary tides, as settled by the case of *Att.-Gen. v. Chambers* (u), is *prima facie* vested in the Crown, and the right of the public is co-extensive with and depends upon the limit of the *prima facie* right of the Crown to the soil covered by the tidal water (x).

A difficulty, however, has arisen as to the meaning of the expression "as far as the sea flows and reflows," viz., as to whether this means the *vertical rise and fall* of water as affected by the tidal influence at the spot in question, or whether it means horizontal motion of water flowing backwards and forwards over the soil by force of the impulse and withdrawal of the tidal wave at ordinary tides. This question has not yet been definitely settled.

Lord Hale, *De Jure Maris*, cap. iv. p. 376, when treating of the King's interest in salt waters, the sea and its arms and the soil thereof, and of the right of fishing there, says:—

"The King's right of propriety or ownership in the sea and soil thereof is evidenced principally in these things that follow:

"1st. The right of fishing in this sea and the creeks and arms thereof is originally lodged in the Crown, as the right of depasturing is originally lodged in the owner of the wast whereof he is lord, or as the right of fishing belongs to him that is owner of a private or inland river. * *

"But though the King is the owner of this great wast, and as a consequent of his propriety hath the primary right of fishing in the

(t) *Pearce v. Scotcher*, (1882) 9 Q. B. D. 162; *Mussett v. Birch*, (1876) 35 L. T. N. S. 186; *Blount v. Layard*, [1891] 2 Ch. 689, per Bowen, L.J.; *Smith v. Andrews*, *Ibid.*, p. 696; *Reece v. Miller*, (1882) 8 Q. B. D. 626; *Murphy v. Ryan*, (1868) Ir. Rep. 2 C. L. 143; *Williams v. Wilson*, (1838) 8 A. & E. 314; *Miles v. Rose*, (1814) 5 Taunt. 705. As to ousting the jurisdiction of the justices, see *Paley v. Birch*, (1867) 8 B. & S. 336; *Reg. v. Stimpson*, (1863) 4 B. & S. 307; 32 L. J. M. C. 208; *Ex parte Higgins*, (1843) 10 Jur. 838; *Hudson v. Macrae*, (1863) 4 B. & S. 585; 33 L. J. M. C. 65; *Priest v. Archer*, (1887) 51 J. P. 725; *Greenbank v. Sanderson*, (1884) 49 J. P. 40; *Blower v. Ellis*, (1886) 50 J. P. 326; *Mickelthwait v. Vincent*, (1892) 67 L. T. 225; *Orichton v. Gallery*, (1870) 19 W. R. 107; *Ashworth v. Browne*, (1860) 10 Ir. Ch. R. 421; *Reg. v. Allen*, (1864) 4 B. & S. 915; 33 L. J. M. C. 98; 13 Jur. N. S. 796. The public have no right to fish in non-tidal lakes, notwithstanding evidence of long user: *Pery v. Thornton*, (1888) 23 L. R. Ir. 402.

u) (1859) 4 De G. M. & J. 55.

x) *Malcolmson v. O'Dea*, (1862) 10 H. L. Cas. 593.

sea and the creeks and arms thereof; yet the common people of England have regularly a liberty of fishing in the sea or creeks or arms thereof, as a publick common piscary, and may not without injury to their right be restrained of it, unless in such places or creeks or navigable rivers, where either the King or some particular subject hath gained a propriety exclusive of that common liberty.

* * * * *

“2nd. The next evidence of the King’s right and propriety in the sea and the arms thereof is his right of propriety to—

(i.) The shore; and

(ii.) The *maritima incrementa*.

“(i.) The shore is that ground that is between the ordinary high water and low water mark. This doth *primâ facie* and of common right belong to the King, both in the shore of the sea and the shore of the arms of the sea.

“And herein there will be these things examinable—

1st. What shall be said the shore, or *littus maris*.

2nd. What shall be said an arm or creek of the sea.

3rd. What evidence there is of the King’s propriety thereof.

“1. For the first of these it is certain that that which the sea *overflows*, either at high spring tides or at extraordinary tides, comes not as to this purpose under the denomination of ‘*littus maris*’; and consequently the King’s title is not of that large extent, but only to land that is usually *overflowed* at ordinary tides.

“That therefore I call the shore, that is between the common high water and low water mark and no more.

“2. For the second, that is called an arm of the sea where the sea *flows* and *reflows*, and so far only as the sea so *flows* and *reflows*; so that the river of Thames above Kingston and the river of Severn above Tewkesbury, &c., though they are public rivers, yet are not arms of the sea. But it seems that, although the water be fresh at high water, yet the denomination of an arm of the sea continues, if it *flow* and *reflow* as in Thames above the bridge.

“3. For the third it is admitted that ‘*de jure communi*’ between the high water and low water mark ‘*primâ facie*’ belong to the King, 5 Rep. 107; *Constable’s Case*, Dy. 326. * *

“And as the shore of the sea doth *primâ facie* belong to the King, viz., between the ordinary high water and low water mark, so the shore of an arm of the sea between the high water and low water mark belong ‘*primâ facie*’ to the King, though it may also belong to a subject, as shall be shown in the next chapter.”

In these passages it seems abundantly clear that Lord Hale uses the words “flow and reflow” in the sense of rise and fall. He is

setting out the evidence of the King's title to the sea and soil thereof, and he shows the limit and extent or landward boundary of the Crown's right, viz., "the shore which is between ordinary high water and low water mark," and that the Crown is not entitled to that which the sea *overflows* at extraordinary tides, but only to land that is usually *overflowed* at ordinary tides. "That therefore I call the shore which is between the common high water and low water mark and no more"; and he cites the case of *The Prior of Tintmouth*, where the soil on which houses had been built was claimed by the King "*eo quod fluxu et inundatione maris comprehenditur.*" It appears to be clear that Lord Hale means that the flow and reflow was the rise and fall of the tide, not its horizontal movement, both for the purpose of defining the Crown's right to the foreshore, and for ascertaining the extent and upward limit of an arm of the sea with regard to the right of fishing. This is made still clearer by the subsequent passage, where he refers to the case of *Wapping Wall* (y). In that case (he says) "the information was laid, viz., 1st, that the river of Thames *flowed* and *reflowed*; 2nd, that *consequently* it was an arm of the sea; 3rd, that it was the King's river; 4th, that it was the King's port. And upon all these it was concluded that the land between the high water and low water mark was the King's land, and accordingly decreed." "And (he adds) this shall suffice for the King's right in the shore of the sea or rivers that are arms of the sea, viz., the land lying between the high water mark and the low water mark at ordinary tides." Lord Hale does not expressly define the upward limit of an arm of the sea, but he does distinctly set out the limit of the Crown's right to the bed and shore as between the high water and low water marks, and these are marks not the marks of horizontal but of vertical movement, and shews that the right of fishing depends on the ownership of the soil by the King.

The earliest case that suggests that the upward limit of an arm of the sea in which the Crown has title to the soil is the case of *The King v. Smith* (z), in 1780. It was a case of an indictment by the corporation of London, as conservators of the Thames, against the defendant for obstructing them in the making an embankment and tow-path at Richmond in the bed of the river. The question submitted to the Court was whether (this being a navigable river) the right to the soil in the bed of the river *usque ad filum aque* was in the owners of the ground adjoining to the river? Counsel argued for the defendant that the corporation had no right to the soil, "and as to the right of the Crown a distinction was to be made. That

(y) Hale, De Jure Maris, pp. 379, 380.

(z) 1780) 2 Dougl. 441.

right was only in navigable rivers as far as the sea ebbs and flows. It did not depend on the circumstance of the river being navigable. Some rivers were so immemorially by nature and from the flux and reflux of the sea; others were kept in a navigable state by the effects of art. The Thames might be considered as falling under the first description from Richmond to London Bridge. From thence upwards it was preserved in a navigable state by art. The authorities concerning the right to the soil extended only to navigable rivers of the first sort. The sea did not properly flow above London Bridge. The tide beyond that limit was occasioned by the pressure and accumulation backwards of the *river water*. Therefore the soil did not belong to the Crown." Lord Mansfield evidently saw through the fallacies and misstatements of this argument and did not call for a reply. He said: "The distinction between rivers navigable and not navigable was very ancient; but what was contended for, viz., a distinction between the cases of the tides occasioned by the flux of sea water, or the *pressure backwards* of the *fresh water* of a river, seemed to be entirely new, and that there were no facts set forth in the case which let in the consideration of that distinction—that the case did not state whether the water when the tide *rises* at Richmond is fresh or salt, but that it rather took it for granted that it is salt, describing the Thames generally as a navigable river." There was, therefore, no decision on the point. The case is sometimes cited to prove that the tidality of a river extends to the point where the pressure back of the tidal wave at ordinary tides causes the water to rise vertically, but it is not an authority for that purpose (a).

In the case of *Horne v. Mackenzie* (b) the question was whether the defendant had fished unlawfully by means of stake nets, which was an illegal act if done in a "river," but permissible in the sea. It was held that the jury were improperly instructed, that "the thing to be looked at is the absence or prevalence of the fresh water though strongly impregnated by salt"; and that the absence or prevalence of salt water was a consideration of minor importance in such a case. The question in this case was not what constitutes a tide, but what for the purpose of the Salmon Fishery Acts was to be considered river and what sea (c).

In the case of *Reece v. Miller* (d), in 1882, which turned on the question of the ousting of the magistrates' jurisdiction by setting up a claim to the public right to fish in a part of the river Wye

(a) See Gould on Waters, sect. 44; Angell on Watercourses, sect. 544.

(b) (1839) 6 Cl. & Fin. 628.

(c) See per Stephen, J., *Reece v. Miller*, (1882) 8 Q. B. D., p. 631.

(d) (1882) 8 Q. B. D. 626.

in Monmouthshire, the evidence showed that at the spot in question the water was not salt, and that in ordinary tides it was unaffected by any tidal influence; but that upon the occasion of very high tides the rising of the salt water in the lower parts of the river dammed back the fresh water and caused it upon those occasions to rise and fall with the flow and ebb of the tide. (Grove, J., and Stephen, J., citing *Mussett v. Burch* (e) and *Murphy v. Ryan* (f), held "that the public cannot acquire by immemorial usage any right of fishing in a river in which, though it be navigable, the tide does not ebb and flow. For this purpose it seems that 'tidal navigable river' means that part of the river which under ordinary circumstances is tidal and navigable as such; and it is not enough to show that sometimes under unusual circumstances the river at the place in question is affected by the tide. For the purpose of the right claimed the place must be one which may be fairly said to be within the influence of the ebb and flow of the tides in the ordinary course of things. It does not seem reasonable that in every part of a river which may be affected by exceptionally high tides, and in which the water may be occasionally to some extent backed up in consequence, there should be a public right of fishing."

In this case it is clear that the view taken as to the measure of tidality was that it was to be measured by the vertical rise and fall of the water affected by tidal influence, and not by the horizontal movement. It decides that the upward limit of tidality does not extend to the limit of the influence of extraordinary tides. We have, therefore, a decision as to one side of the boundary which we seek, between the tidal and non-tidal portions of a river, and that laid down on the basis of measurement of the rise and fall of the water. This is the view taken in America, viz., that it is the fluctuation of the water as shown by its regular rise and fall under the influence of the tide, and not the proportion of salt water to fresh, that determines the point in a river at which its navigable character ceases (g).

This question of the tidal limit arose in the case of *Culcraft v. Guest* (h), tried by Mr. Justice Henn Collins in 1897. It was an action of trespass to a several fishery claimed to extend from a spot called Holme Bridge down to the sea in the river Frome, in Dorsetshire. At Holme Bridge the water was fresh: the current was always running downward towards the sea; but at ordinary tides it was

(e) (1876) 35 L. 1 N. S. 486.

(f) (1868) Ir. Rep. 2 C. L. 143.

(g) Gould on Waters, sect. 44; *Peyzour v. Howard*, 1833) 7 Peters, 343; *Lapish v. Bangor Bank*, 8 Greenl. 85.

(h) Not reported.

proved that there was a fluctuation in the water caused by the pressing back of the fresh water by the influence of the tide. It was claimed for the plaintiff, whose grant was in ambiguous terms, viz., of "the fishery in the north and south rivers of Wareham" (the Frome and Puddle), that it must be presumed that the Crown, when the river was put in defence and at the time of the grant, was owner of the soil of the river which was affected by the ordinary tides, and that therefore the grant extended to pass the soil and fishery up to Holme Bridge. For the defendant it was contended that the river was not tidal at the *locus in quo*, because it was proved that the tide did not flow and reflow horizontally over the bed of the river, and that therefore the public right of fishing never extended to the *locus in quo*, and the Crown could not have put it in defence and granted the soil and fishery at the spot. The precise question of the limit of the tide was therefore distinctly raised. A surveyor from the Ordnance Office was called by the defendant to prove that the tide flowed and reflowed in the horizontal sense only up to a spot called Wareham Pool, which was below the *locus in quo* (i). On this point Mr. Justice Collins's judgment was as follows:—

"Then we come to what is one of the strongest points for the defendants, a point which has given me some trouble in this matter, but on which I have been very much assisted by the very able argument addressed to me by Mr. Channell, yesterday, and that is this: Mr. Bosanquet says, and has called evidence to prove it, that the limits of the fishery cannot have been extended so as to cover the '*locus in quo*,' because the '*locus in quo*,' he says, is far above the flow and reflow of the tide. Now, I think he has shown that the '*locus in quo*' is above the point to which the water flows up. I do not think it is proved that there is ever any flow up the river past the point in question; I think it is proved that the natural flow of the river down towards the sea continues at all times, not with the same velocity, but does continue at the point in question. But it is also proved to my satisfaction that on ordinary tides—I do not say spring tides, but ordinary tides—there is a rise and fall of water at Holme Bridge, caused by the action of the tide in penning back the descending fresh water in the river, with the effect that the water at Holme Bridge rises and falls on ordinary tides to the extent of a few inches, and on spring tides, regular spring tides—not abnormal spring tides, but at recurring periods, as at the full and the new moon—it rises to a considerably greater height, one witness said sometimes as much as a foot. Now, on the facts I have no

(i) It appears that the practice of the Ordnance surveyors is to mark on these maps the spot to which ordinary tides flow, meaning flow and reflow in the horizontal sense only.

hesitation in accepting the evidence of those witnesses, who live on the spot, and who gave their evidence, as it seemed to me, perfectly honestly, notably the blacksmith, Garrett, who used to receive and keep the nets for Mr. Panton, and, I think, for Mr. Stevens, when they fished down from Holme Bridge. He, living close to the place, has given me evidence, which I quite accept, as to the rise which I have spoken of, and he is corroborated by other old witnesses who live on the river, and have special means of noticing what the phenomena are. That has not been contradicted by any person whose business or way of life it was to be about the place and notice the phenomena. I have had evidence that the water flows down the stream, and, as I have said, I accept that, but I have also had evidence, scientific evidence, from a gentleman called from the Ordnance Department, who has told me of experiments which he made with a view to see how far the tide, properly so called, flowed up. Those experiments seem to me to be entirely consistent with the phenomena deposed to by the witness that I have named, and do not appear to me to negative them in the least, or to be at all incompatible with them; and I accept the view of the law Mr. Channell put before me, that what we have got to look at is the rise and fall of the tide on ordinary tides; and if we come within the ambit of that rise and fall on ordinary tides, we come within the probable limit of a grant from the Crown in a public navigable river. As I pointed out, if you look to the reason and principle of the matter, a public navigable river is really looked upon as a branch of the sea; the sea flows up along the sand, it does not flow in one continuous direction up stream, and what we have to look to is the rise and fall in the basin that contains the water in question. That basin no doubt is narrow, and gets narrower as you go up a navigable river, but still you have the same phenomena in that altered basin that you have in the sea. You have the water rising up the banks which contain the water, and when you have got that rise and fall distinctly marked, due to the action of the tide, I think you are within the area of the tidal influence, within the meaning of the cases which have been quoted. The case chiefly relied on for that—it is also relied upon by Mr. Channell—was the case of *Reece v. Miller (a)*, but I think, when criticised, that that case really does decide no more than Mr. Channell says it decides. It decides that you cannot say of a particular place, which in certain abnormal conditions of wind and tide comes under the tidal influence, that you cannot describe that place as being within the tidal area, and the ground put is because there is no flow and reflow of the tide, and that you must have flow and

(a) (1882) 8 Q. B. D. 626.

reflow of the tide in order to find the limit of your tidal area; but I think 'flow and reflow' in this passage is really used in the sense Mr. Channell claimed for it, namely, the rise and fall, not in extraordinary or special conditions, but in ordinary normal conditions of the tide at ordinary full tide, and that if you get the rise and fall of water under those conditions due to the action of the tide, I think, as I have said, the point is within the area which may be covered by a grant from the Crown of the right of fishing in a public navigable stream. Now, I find, as a matter of fact, that the flow of the tide did within those principles exist, and does at this moment exist, right up to Holme Bridge, but I am also of opinion that the tidal influence is much less sensible now than it was formerly, and I have not the slightest doubt that in the fullest sense—in Mr. Bosanquet's sense—the flow of the tide at the time of this grant did exist up to Holme Bridge. I think I am justified in assuming that, having come to that conclusion from the evidence that I have already referred to, coupled with the fact that some of the old witnesses, one of them certainly, told me that the river was not capable now of receiving vessels of the same burthen that it formerly was, and also from using one's common sense in reference to rivers of this kind, which necessarily do get more or less silted up. But when you have a grant which is not limited in terms as to the upper portion of the river, the limits of which are to be sought by the user, which, for one hundred years, and I do not know how much further back it may have gone, but I am quite within the mark in saying I have taken evidence of user for one hundred years right up to the point, it all seems to me to show clearly that at the time of the grant the limits of the fishery must have been supposed to extend up to Holme Bridge, and therefore that in itself appears to be strong evidence that the tide must have flowed up to that point at least, in the fullest sense of the term. However, it is not necessary for me to base my opinion upon the inference that it did flow up to that point and does not now, because my opinion is, it does flow now within the meaning I have given. Mr. Bosanquet declined to argue it or to base any argument in the suggestion that the sea might have flowed, in the full sense of the term, at the time of the grant, but he said reflow here is leaving an interval which embraces the '*locus in quo*' where the tide, in the sense that he contends for, ceases to flow. He declined to base any argument on that view of the law, and therefore I am bound to consider it, but as far as I am at present advised, it seems to me the argument on that point by Mr. Channell must prevail also. I think the presumption is, in a grant of this kind, that the soil passed to the grantee. Whether it covered the minerals below is a question that may be open to

discussion, or whether it ought not to be limited—as one Judge, I think Mr. Justice Maule, suggested in one case—whether the implication of the grant of the soil in the case of a fishery would not be limited to such part of the soil as is necessary for the user of the fishery, something like the principles which were held to apply in the case of *Coverdale v. Charlton* (*k*) to the property of local boards in the soil of streets; but it is not the least necessary to consider whether any qualification is to be put on the dominion of soil, which is taken to be granted in a grant of several fishery. I think the presumption is it does go, and in that case the presumption of the grant, if, indeed, it is not demonstrated by the terms of the grant, is that the soil does pass, because you have here weirs mentioned as part of the fishery, and going with the fishery, and, according to Lord Hale, the grant of the weir in itself is a grant of the soil of the fishery. So I think that here Mr. Channell is right in his contention that the soil passes, and if the soil passes, that land where the river flows is covered with water, and if it is not covered with sea-water, or water affected by the tide, I am inclined to think it would still be within the ambit of the fishery when granted. The rights of fishing over that land still covered with water would not cease. However, as I said before, it is not necessary for me to decide that point, because in my judgment the tide does flow at the point in question.”

In this case the point at issue is clearly decided on the principle that the limit of tidality is to be measured by the fluctuation of the water in its *rise and fall at ordinary tides* up and down the banks; and the *ratio decidendi* is that the public right of fishing, being dependent on the *primâ facie* right of the Crown to the soil of tidal waters, must be measured in the same manner that the Crown's right to the soil, upon which the right of fishing depends, is to be ascertained (*l*), viz., by the vertical rise and fall of ordinary tides affecting the rise and fall of the water, whether it be fresh or salt. After the trial, some further documentary evidence was discovered, consisting of declarations and statements by old witnesses as to the upper boundaries of the fishery in question. On appeal to the Court of Appeal, these documents were admitted as evidence of reputation (*m*). They went to show that the fishery did not extend higher than Wareham Pool. On this further evidence, the Court of Appeal decided that Wareham Pool was the upward limit of the fishery (*n*). The question of the limit of the tide was fully argued,

(*k*) (1878) 4 Q. B. D. 101.

(*l*) *Att.-Gen. v. Chambers*, (1859) 4 De G. & J. 55.

(*m*) [1898] 1 Q. B. 759.

(*n*) Not reported.

but the Court of Appeal gave no decision and did not reverse the judgment on that point, Lord Justice Rigby stating, in delivering the judgment of the Court: "The conclusion to be derived from the evidence taken altogether is that the Crown grant, as explained by usage, extended no further upwards than Wareham Pool, and that the plaintiff's claim fails on that ground. It is therefore unnecessary to go into the question of the true meaning of the flow and reflow of the tide and the precise limits from time to time of a Crown grant, valid notwithstanding Magna Charta, and indisputably extending at the time of the grant to the whole of the tidal waters of a given estuary."

The general result of the authorities, therefore, is to show that the line of demarcation between the tidal and non-tidal portions of a river, as regards the *prima facie* right of the public to fish, is a line to be drawn across the river at the spot where the rising of the water, whether salt or fresh, marks the high water mark of ordinary tides upon the banks. This line will be identical with the line of demarcation of the Crown's *prima facie* right to foreshore in the same river, and is to be ascertained on the same principles (*o*). This is an ascertainable and easily discovered boundary. There appears to be no authority for the proposition that the line of demarcation is that accepted by the Ordnance surveyors, viz., the horizontal flowing and reflowing of the tide. It is a boundary most difficult to ascertain—one might say, impossible to ascertain, because although the water on the surface may appear to be ebbing, the water on the bottom may be still flowing upwards at the same time, and the exact spot where the flowing and reflowing ceases can never be accurately determined.

Foreign Boats in British Waters.

A foreign sea fishing-boat may only enter within the exclusive fishery limits of the British Islands for purposes recognised by international law, or by reason of any treaty or convention with their Government, or for any lawful purpose (*p*). If a foreign sea fishing-boat enters the exclusive fishery limits it must return outside the limits as soon as the purpose for which it entered has been accomplished. It must not fish within the limits, and must obey the regulations prescribed by any Order in Council (*q*). If there is a breach of these provisions by any foreign sea fishing-boat, any fish or fishing gear found on board, or shown to have been taken or used

(*o*) *Att.-Gen. v. Chambers*, (1859) 4 De G. & J. 55.

(*p*) Sea Fisheries Act, 1883, s. 7.

(*q*) Sea Fisheries Act, 1883, s. 7, sub-ss. (a), (b), (c).

within the exclusive fishery limits, are liable to be forfeited (*r*), and the master or person in charge is liable to a fine of 10*l.* for the first offence, and 20*l.* for any subsequent offence (*s*).

Further as to Sea Fisheries see Part II.

(*r*) Fisheries Act, 1891, s. 5.

(*s*) Sea Fisheries Act, 1883, s. 7, sub-s. 3.

CHAPTER XX.

OF BOUNDARIES OF FISHERIES.

As a general rule, boundaries of fisheries will be found to have been in ancient times co-extensive with the boundaries of manors where those manors included within their ambit the rivers in which the fisheries existed. Manors were usually granted as *terre* or *territoria*, and for the most part consisted of tracts of land lying in a ring fence (*a*). Sometimes this "terra" would comprise a number of manors, and was called an honour, and the fishery in the river passing through the honour would sometimes remain annexed to the honour, and in possession of its lord, to the exclusion of the lords of subinfeudated manors lying on the banks within the ambit of the honour. In other cases the lord of the honour frequently granted portions of the river as within the ambit of the manors he subinfeudated to his tenants, retaining only so much of the river as lay next the principal manor or *caput honoris*, or retaining a portion opposite some of the subinfeudated manors, while granting out other portions in other parts. This was the case in the river Arun.

Where the river ran through the manor the fishery of the whole river was parcel of the manor. Where a manor lay wholly on one bank, as a general rule it extended to the mid-stream all along the extent of the manor. This rule, however, was not invariable, as numerous cases of manors situate wholly on one bank can be shown to comprise the river and fishery of the whole stream to the exclusion of the manors on the opposite bank (*b*), and even to include a narrow strip of such opposite bank, as the manor of Cookham, on the south side of the Thames, which included eighteen feet in width of the bank on the north side of the river. Sometimes a fishery will be found to extend over a river running through several lordships or manors. The fishery in the Ouse near Huntingdon extended over the manor of Staunton, and the manors belonging to the abbots of Romsey, St. Ives, and Halliwell (*c*).

(*a*) *Malox Bar. Anglica*, chapter i.; *Duke of Beaufort v. Swansea*, (1849) 3 Exch. 413.

(*b*) *Blount v. Lagard*; *Smith v. Andrews*, [1891] 2 Ch. 678.

(*c*) *Inq. post mortem*, 11 Hen. VI. No. 43.

It has been laid down by Manwood (*d*), in a chapter headed "That all the meeres and bounds of the Forest do belong to the King only," that no man may fish in a river which is the boundary of a forest without license. The passage is as follows: "In the Assizes of Pickering it was adjudged that no man may fish in any river that is a boundarie or meere of a Forest, unlesse he have warrant so to doe, for the same is parcell of the Forest, and is also the Kinges because it is a meere of the Forest"; and he cites the "Assisa Forestæ de Pickering," 8 Edward III., A.D. 1334. There is no judgment on the record to that effect; but there is a judgment there (*e*), from the perusal of which no doubt Manwood constructed the dictum above cited, making, however, a serious omission from the text to suit the heading of his chapter. This omission has led to the unqualified statement that the King is entitled to the exclusive fishing in *all* rivers which are bounds of a forest. The case is one in which the abbot of Rievaulx is presented for fishing in rivers which happened to be meers of the forest, but were claimed also to be *dominica aquæ* of the forest. The entry runs "Juratores presentant quod Abbas de Ryevall piscatus est sepiissime in aquis de Derwent Costa et Rya que sunt dominicæ aquæ et bundæ forestæ de Pickering ad dampnum Domini Comitis" (the Earl of Lancaster, who was owner of the forest). The abbot defends, and shows that the waters and the fisheries in them were granted to his predecessors in the time of King Henry the Second, and claims the fisheries and the soil of the rivers, and he succeeds. In the following Eyre of the Forest, in 12 Edward III., A.D. 1338, the abbot claims the fisheries, and his claim is allowed. Hence it is clear that when a river lies within the demesne of the forest, not granted out, it is of course the King's, who is the owner of the soil, and entitled to the exclusive fishery; but when the river has been granted out, as in the abbot's case, the grantee has the fishery; and Manwood's dictum ought to have stated that no man may fish in a river that is the *demesne water* and a bound of the forest. It seems probable that when the demesne land of a forest is bounded by a river, the entire river, and not the half stream only, belongs to the King; for we find several cases of whole stream fisheries in manors of ancient demesne, especially those lying on the edge of a forest, *e.g.* Cookham and Bray were on the outer bound of Windsor Forest, and the fisheries embrace the whole stream. Yet in those manors the profit of the fisheries is from the earliest times returned as a profit of the manor and not of the forest. Manwood's erroneous dictum has been followed. We find in the charge of the Chief Justice in Eyre

(*d*) Forest Laws, cap. 7, p. 39.

(*e*) D. of L. Cowcher, vol. i. f. 260.

at New Windsor, 24th September, 1632 (*f*), that the jurors of the forest were charged to inquire of the metes and bounds of the forest, “et si ascun river est bound de ceo; car lou un river est bound del forest, le roy ceo avera et tout la proffitt de ceo.” It is matter of history that the proceedings of the Justices in Eyre in the Forests in the time of Charles the First were most arbitrary and oppressive, and held with intent to wring compositions from the landowners within the forest, and to stretch the rights of the Crown as far as possible. These proceedings were complained against in the Great Remonstrance of 1st December, 1641, and such a statement as that above cited can scarcely be evidence of the truth; for here again we have the omission of the qualification that the river must be a *demesne water* as well as a bound of the forest. In all waters lying within the demesne of the forest which has not been granted out, and in all rivers adjacent to the demesnes of the forest which form its bounds, no doubt the King has the fishery, and it is only in that sense that Manwood’s dictum can be read. Where the river has been granted out as parcel of a manor or lands, or where it was parcel of a manor before the district was afforested, the King will have no right—the fishery will belong to the owner of the soil or his grantee. In Driver’s map of the New Forest (*g*) it is stated that the Avon on the entrance north-west of the forest forms the bound there for about a mile and a quarter, and this portion of the river is from time to time fished with nets by the Crown. Probably here the Avon bounds the demesne lands of the forest not granted out. The water in the rest of the river Avon which runs through the forest is private property.

In tidal estuaries situate *inter fauces terre* it is usual to find that the riparian manors extend to the mid-stream, and comprehend the fisheries in the river. This is the case in the Tyne, the Severn, the Trent, the Yorkshire Ouse, Derwent, Mersey, Dee, and all comparatively narrow estuarial rivers. In the wider estuaries, as the lower Thames and the Humber, the manors appear to have been limited to their respective foreshores, and do not extend to the mid-stream.

On the coast of the open sea the fisheries are usually confined to the foreshores of the manors, although we have several instances of deep-sea fisheries extending below low water mark, but not lying *inter fauces terre*, as the oyster beds parcel of the manor of Whitstable (*h*),

(*f*) M. S. Harl. 1330, f. 81.

(*g*) Made under statute 26 Geo. III. c. 87.

(*h*) *Gunn v. Free Fishers of Whitstable*, (1865) 11 H. L. Cas. 192; *Foreman v. Free Fishers of Whitstable*, (1869) L. R. 4 H. L. 266.

the oyster grounds belonging to Faversham, in Kent, and similar fisheries at Tollesbury and other places in Essex.

Many of these ancient boundaries still subsist, especially where the fisheries have been valuable ones and the lords of the manors have been careful not to derogate from their rights by cutting up the fisheries and granting them in portions to riparian owners. But in very many cases the fisheries have been split up by grants made by the owners of them to riparian owners, or to owners in gross; and where the fisheries in the rivers have been of little or no real value, especially in modern times, it will be found, on examination of the evidence of user, that the manorial owner has been careless of his strict rights and has allowed riparian proprietors of land to acquire rights against him by user, the evidence of the exercise of which is sufficiently strong to oust his claim as lord of the manor and vest the fishery and soil in them; for the presumption of law being, in non-tidal water, that the riparian owner has the right to the soil and fishery to mid-stream (*i*); if the lord of the manor will intrude his claim he must make out his title by evidence (*k*). Thus we find in the smaller rivers, where the fishery is of little value, that it is most frequently owned by the riparian owners on the banks rather than by the lord of the manor, in whom it was formerly vested. The true conclusion as to the extent of the fishery in such cases can only be decided on an examination of the language of the respective titles of the lord or his grantee and the riparian owner, and the balance of the user by either party.

In other cases it may happen that the riparian owner may be able to show evidence of fishing, as of right, opposite his land, and the lord also may show evidence of fishing in the same stretch of water; in such a case, although the riparian owner may not be able to set up the ordinary riparian right of exclusive ownership of the soil and fishery to the mid-stream, he may be able to raise a presumption of a grant of common of fishery from the predecessors of the lord of the manor, to be exercised in respect of the riparian land which must have been granted him by a former lord of the manor. In other cases the riparian owner may prove exercise of fishing over all the water within the manor in common with the lord and get a

(*i*) *Waterford Conservators v. Connolly*, (1889) 24 Ir. L. T. R. Exch. 7. The riparian owner is the owner of the soil of half the stream and is entitled to fish half the river, just as he is entitled to take game on the land portion of his property. His right is not an easement nor an incorporeal hereditament, per Pallett, C.B., [unless, *semble*, his evidence only shows a common of fishery], and see *Brauman v. Kinsella*, (1859) 11 Ir. C. L. R. 249.

(*k*) *Lamb v. Newbiggin*, (1844) 1 C. & K. 549.

presumption of a grant of common of fishery over the whole water. Such cases, however, are exceptional.

What may be termed the *longitudinal* extent or boundary of a fishery up and down a river will be determined in each case by the extent of the manor bordering on the river, or the extent of the riparian land adjoining the banks of the river, in respect of which the fishery is claimed, or the extent of the fishery by the limits assigned to it in the particular grant or conveyance or by the user from which such grant is to be presumed. What may be termed the *latitudinal* extent or boundary, the width of the fishery between the bank and the *filum aquæ* of the river, whether tidal or non-tidal, may, in many cases, be a difficult question. Where there are fisheries on opposite sides of a river, the boundary of the river and fishery is the *medium filum aquæ* of the river. There, from the first, the boundary assigned to the manors or lands within which the river flowed was a boundary of a shifting nature (*l*), liable at all times to vary with the natural changes of the river in its course. It is like the case of foreshore (*m*). The ownership of the half stream in a river is a moveable freehold, the boundary of which shifts as the stream gradually and imperceptibly shifts its course; and as foreshore is not that which at the time of the grant was between high water mark and low water mark, but that which from time to time is between those two termini, so the respective portions of a river owned by opposite proprietors are those portions which from time to time lie between the existing *filum aquæ* and the banks.

But a question arises how we are to ascertain and fix the position of the *filum aquæ* in tidal and non-tidal rivers respectively. Is it to be the mid-stream at high water in tidal, and the mid-stream at the ordinary state of the flow in non-tidal rivers; or is it to be the mid-stream at low water in tidal, and the mid-stream at the deepest part of the channel in non-tidal waters?

The first point to consider is, what is the *aqua* of which we have to find the *filum* or mid-stream line? There appears to be no decision or definition or authority on this question in the English Courts. In America the question has been considered and decided on. If, however, we have no authority as to what is the *aqua*, we have decisions as to what is the *bed* of a river, within which the *aqua* of which we seek to define the *filum* flows, and it would seem that a definition of the receptacle which holds the *aqua* will give a definition of what the *aqua* is.

(*l*) Gould on Waters, sect. 159; *Ford v. Lucy*, (1861) 7 H. & N. 151; *Foster v. Wright*, (1878) 4 C. P. D. 438; *Carlisle v. Graham*, (1869) L. R. 4 Exch. 361; *Miller v. Little*, (1878) 2 L. R. Ir. 304.

(*m*) *Scrutton v. Brown*, (1825) 4 B. & C. 485.

The law in America with regard to non-tidal streams, as stated by Gould on Waters, is as follows: "The thread of a private stream is the line midway between the banks at the *ordinary state of the water*, without regard to the channel or the lowest and deepest part of the stream (*n*), and if the land upon one side is gradually and imperceptibly wearing away, and soil is deposited upon the other, it is the thread of the stream for the time being, and not that which existed when the opposite owners acquired their titles, which forms the boundary between their estates" (*o*).

"A fresh-water river (*p*), like a tidal river, is composed of the *alveus*, or bed, and the water; but it has banks instead of shores (*q*). The banks are the elevations of land which confine the waters in their natural channel when they rise the highest and do not overflow the banks (*r*); and in that condition of the water the banks, and the soil which is permanently submerged, form the bed of the river (*s*). The banks are a part of the river bed (*t*), but the river does not include lands beyond the banks, which are covered in times of freshets or extraordinary floods, or swamps or low grounds which are liable to overflow, but are reclaimable for meadows or agriculture, or which, being too low for reclamation, though not always covered with water, may be used for cattle to range upon, as natural or unenclosed pasture (*u*). Fresh rivers, although not subject to the daily fluctuations of the tide, may rise and fall periodically at certain seasons, and thus have defined high and low water marks. The low water mark is the point to which the river recedes at its lowest stage (*x*). The high water mark is the line which the river impresses upon the soil by covering it for sufficient

(*n*) Sects. 198 and 45. *Hopkins Academy v. Dickinson*, 9 Cush. 552; *Boscawen v. Canterbury*, 23 N. H. 188; *Plymouth v. Hobberness*, cited 28 N. H. 217.

(*o*) *Nichols v. Shepherd*, 26 Ohio St. 40; *Prinn v. Walker*, 38 Mo. 94, 98; *Mack v. Skinner*, 44 Mo. 92.

(*p*) Gould on Waters, sect. 45.

(*q*) See Gould on Waters, sect. 41, note.

(*r*) *Howard v. Ingersoll*, (1851) 13 How. (U. S.), 381, 391, 427; 17 Ala. 780; *Houghton v. The C. D. & M. R. Co.*, (1877) 47 Iowa, 370; *Haight v. Keokuk*, 1856 4 Iowa, 199, 212; *Stone v. Augusta*, (1858) 46 Maine, 127, 137; *Alabama v. Georgia*, 1859 23 How. 506.

(*s*) *Ibid.*, 13 How. (U. S.), p. 415. In distinguishing the banks from the permanent bed of the river, the line is determined by examining the bed and banks, and ascertaining where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, in respect to vegetation, as well as in respect to the nature of the soil itself: *Ibid.*, per Curtis, J., pp. 427, 428; *McCollogh v. Wainwright*, (1850) 14 Penn. St. 171.

(*t*) *Ibid.*, *Haight v. Keokuk*, (1856) 4 Iowa, 199.

(*u*) *Ibid.*, 13 How. (U. S.), p. 415.

(*v*) 13 How. pp. 415, 417, 428.

periods to deprive it of vegetation, and to destroy its value for agriculture" (y).

As to non-tidal rivers, we have in England one decision as to the principles to be followed in ascertaining the boundary of the bed of the river against the banks. The question arose in the case of *Hindson v. Ashby* (z); Romer, J., remarking that no authority existed in English law, followed the principle of the American decision in *Howard v. Ingersoll* (a). The question in the case was whether a strip of land below the high bank of the river when the river was full, and which was sometimes covered with water and at other times not, belonged to the riparian owner as accreted land, or belonged to the owner of the fishery as part of the bed of the river. The learned Judge said: "The main defence is that the land in dispute has never ceased to be, and is still, part of the bed of the river. Now, in considering this question, there has been considerable discussion as to how the bed of the river is to be ascertained. Of course, if a river preserves a tolerably even flow, and does not fluctuate in volume much, except on extraordinary occasions, there is no difficulty in determining its bed. But when the river is one like the Thames, that is to say, one which, apart from extraordinary floods or droughts, changes considerably in volume in the course of each year, being, as a rule, much higher in some months of the year than in others, then the question as to how its bed is to be determined is not so easy. Various suggestions have been made in the case before me by the opposing sides. It has been suggested, *inter alia*, (1) that any land which is covered by the river in the course of its flow at any time during an average or ordinary year is of necessity to be considered part of the river; (2) that no land is to be considered as part of the bed which is not always covered by the river throughout any ordinary or average year; and (3) that, by some sort of analogy to the method of fixing the margin of the bed of the ocean on the seashore, the margin of the bed of the river is to be ascertained by taking a line midway between the margin of the bed covered by the average highest flow and of that covered by the average lowest flow of the river. But, in my opinion, none of these suggestions are well founded. I think that the question whether any particular piece of land is or is not to be held part of

(y) *Howard v. Ingersoll*, (1851) 13 How. 381; *Houghton v. The C. D. & M. R. Co.*, (1877) 47 Iowa, 370; *Musser v. Hershey*, (1876) 42 Iowa, 356; *McCullough v. Wainwright*, (1850) 14 Penn. St. 171; *Stover v. Jack*, (1869) 60 Penn. St. 339; *Wainwright v. McCullough*, (1869) 63 Penn. St. 66. See *The Batture*, Am. State Papers, vol. 17, p. 90; Public Lands, vol. 2, pp. 90 *et seq.*; *Municipality No. 2 v. Orleans Cotton Press*, 18 La. 125, 278; *Lacy v. Green*, 1877) 54 Penn. St. 514; *Gard v. Chambers*, 3 Ohio, 495.

(z) [1896] 1 Ch. 78; [1896] 2 Ch. 1.

(a) 54 U. S. at p. 427.

the bed of a river [at any particular spot, at any particular time, is one of fact, often of considerable difficulty, to be determined, not by any hard-and-fast rule, but by regarding all the material circumstances of the case, including the fluctuations to which the river has been and is subject, the nature of the land, and its growth and its user. I know of no authority in English law which has expressly decided this, but on principle I think it ought to be so decided. In the United States the question has been judicially considered, and a view expressed in accordance substantially with that formed by me. I find that in the case of *Howard v. Ingersoll* (b), before the Supreme Court of the United States, Curtis, J., expresses himself as follows with reference to the question; and though, of course, his decision in nowise binds our Courts, yet I cite his judgment because I think that, in substance, it is in accordance with the English law on the point. He says: 'That the banks of a river are those elevations of land which confine the waters when they rise out of the bed; and the bed is that soil so usually covered with water as to be distinguishable from the banks by the character of the soil or vegetation, or both, produced by the common presence and action of flowing water. But neither the line of ordinary high water mark, nor of ordinary low water mark, nor of a middle stage of water, can be assumed as the line dividing the bed from the banks. This line is to be found by examining the bed and banks, and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, in respect to vegetation, as well as in respect to the nature of the soil itself. Whether this line between the bed and the banks will be found above or below, or at a middle stage of the water, must depend upon the character of the stream. The height of a stream, during much the larger part of the year, may be above or below a middle point between its highest and least flow. Something must depend also upon the rapidity of the stream and other circumstances. But in all cases the bed of a river is a natural object, and is to be sought for not merely by the application of any abstract rules, but as other natural objects are sought for and found, by the distinctive appearances they present: the banks being fast land, on which vegetation, appropriate to such land in the particular locality, grows wherever the bank is not too steep to permit such growth, and the bed being soil of a different character, and having no vegetation, or only such as exists when commonly submerged in water.' "

On appeal (c) it was held that the principle on which *Romer, J.*,

(b) 54 U. S. at p. 427.

(c) [1896] 2 Ch. 1.

had proceeded in determining the extent of the bed of the river was sound, but that he had been mistaken on the facts and misled by the examination of certain photographs. Smith, L.J., adopted the decision in the case of *The State of Alabama v. State of Georgia* (d), as follows :—

“I take the bed of a river to be where the running water of the river makes its mark. It may be there one moment and back another; and as the rains from heaven descend, it will ever and again fill its old accustomed bed.

“I will here use the words which I find in an American case to which I have been referred (*State of Alabama v. State of Georgia*), for they in apt language convey what I mean to express as to what constitutes a bed of a river: ‘The bed of a river is that portion of its soil which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring, or the extreme droughts of the summer or autumn.’”

We have here a clear decision on the principles by which the extent of the bed of a non-tidal river is to be ascertained, and it would appear to follow (although there is at present no English decision on the point) that in ascertaining the position of the *filum* of the bed, the middle line between the edges of the bed at the ordinary state of the river will be taken. This line will be the *filum aquæ*, and will form the boundaries of the soil and the fishing rights of the respective owners of the fisheries on either side of the river.

If this principle is sound, it will happen in some rivers, at the time when the flow of the water is low, that the owner of the fishery on one side of the river may be temporarily deprived of his fishery. It seems clear that, in seeking for the *filum aquæ*, the opposite proprietors cannot follow the state of the water with regard to its depth from day to day. The line to be drawn between them is the mid-line of the usual flow, not the mid-line of the flow as it may happen to exist from day to day. The line is to follow the contour of the bank where the water mark of usual flow is marked upon the bank. This in a winding river may have the effect, during periods of low flow, of putting the whole of the fishery on one side of the line and depriving the opposite proprietor of his fishery until the water rises to its usual height. There must be some definite position for this mid-line, and, notwithstanding its possible inconvenience, this seems to be the only possible line to divide the right of soil and the right of fishery in a non-tidal river; for if it be held that the opposite

proprietors are to follow the daily state of the flow of the water to find the mid-line, then there will never be an ascertainable boundary for their rights; *e.g.* suppose that the proprietor of the south bank has fixed bucks to the mid-stream opposite his lands, measuring it at the usual flow, at a spot where the bank is concave in shape, with the deep water running against it; then if in summer time the water remains only on the south side of the river, where the bucks are situate, if the proprietor on the north bank is to follow the state of the water and search for the mid-line in the middle of that, he would be taking the profit of some of the bucks and manifestly trespassing on the soil belonging to the proprietor on the south bank. There is no suggestion that owners of fisheries on opposite banks are entitled to fish in common, except by mutual agreement (*e*). Each has a distinct right on his own side of the *filum*, and stands to gain or lose his fishery according to the rise and fall of the flow of the river. If the gradual alteration of the course of the bed of the river changes the position of the marks of the usual flow on the banks which give the limits of the bed, then the mid-line will change and follow the curves of the banks irrespective of the depth of the water on either side of it, and the freehold will shift, as the line of the usual flow on the bank shifts, by gradual process. The riparian owner will gain the land accreting to his freehold on the one side, the opposite riparian owner losing his land washed away, but retaining his fishery, on the other side.

In tidal rivers in which fisheries exist and are bounded by the *filum aque*, as the Severn (*f*), the Tyne, the Trent, &c., we have again no definition of what is the *aqua*, but we have authority as to what is the *filum aque*. Lord Hale shows (*g*) that “the *filum aque Sabrinae*, or the middle of the stream or channel at low water, is the constant boundary of the manors on every side, let it change its course as often as it will and as much as it will.” From this it would appear that the *aqua* in tidal rivers is the water of the river (not of the sea) at the time of low water when the tidal influence is absent and the river is discharging its waters to the sea. This *aqua* runs in the bed (*fundus*) of the river, and the *filum aque* is its mid-line. The edge of the foreshore at ordinary low water takes the place of the edge of the bank of non-tidal water at the usual flow and forms the shoreward limit of the bed (*fundus*), just as the bank (*ripa*) at the usual flow forms the edge of the bed of a non-tidal river.

The question of what is the “bed” of a tidal river (the lower Thames) was discussed in the case of *Pearce v. Bunting* (*h*). The

e See case of *Preston, water*, pp. 47, 59.

f Hale, *De Jure Maris*.

g First Treatise, p. 354.

h [1896] 2 Q. B. 360.

question in that case was whether the foreshore owned by a private person came within the definition of the "bed of the Thames" used in the Thames Conservancy Acts, 1857 and 1894. It was decided by Cave, J., and Wills, J., that the "shore" was a distinct thing from the bed, and that the bed was the river between the low water marks on either side. Wills, J., observing that the case of *Hindson v. Ashby* referred to the non-tidal part of the river where there was no foreshore, decided on the authority of *Att.-Gen. v. Chambers* (i), that the shore was *littus maris*, as distinguished from "soil of the sea," which is the same thing as "bed." The same question as to the same place was raised in the case of *The Conservators of the River Thames v. Smeed* (j). The Court of Appeal disapproved of the decision in *Pearce v. Bunting*, Smith, L.J., deciding (p. 338), on the authority of the case of *The State of Alabama v. State of Georgia* (k), referred to in *Hindson v. Ashby*, that the phrase "bed of a river" meant the bed between the ordinary high water marks; Chitty, L.J. (at p. 353), being of the same opinion, but not referring to any authority. Lord Esher concurred in these judgments. Lord Justice Smith said: "Then what is the *prima facie* meaning of the words the 'bed of the Thames'?" In my judgment they denote that portion of the river which in the ordinary and regular course of nature is covered by the waters of the river. It need not be constantly covered if in the ordinary course of things it is habitually covered. I will cite a passage from the judgment in an American case, namely, that of *The State of Alabama v. State of Georgia* (l), which I cited in my judgment in *Hindson v. Ashby* (m), for it exactly conveys what I understand by the meaning of the phrase 'bed of a river' [non-tidal]. It is this: 'The bed of the river is that portion of its soil which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to convey it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring, or the extreme droughts of the summer or autumn.' This, when applied to a tidal river, means without reference to extraordinary tides at any time of the year. This, in my judgment, is the *prima facie* meaning of the words 'bed of the Thames,' and the question is, in the Act of 1894, is there a context which causes the words not to bear their *prima facie* and ordinary meaning?" Lord Justice Chitty said: "I come now to consider the first of the three points

(i) (1859) 4 De M. & G. p. 213.

(j) [1897] 2 Q. B. 334.

(k) (1859) 64 L. S. 515.

(l) (1859) 64 U. S. 515.

(m) [1896] 2 Ch. 1, at p. 25.

mentioned in an early part of this judgment, namely: What is the proper meaning of the term 'bed' when applied to such a river as the Thames, which from its source as far as Teddington Lock is a non-tidal river, and from Teddington Lock downwards is a tidal river? In my opinion the bed of the Thames means, and includes, the soil or ground which is covered by water in the ordinary course of nature—the ground over which the water flows or on which it lies. I exclude all extraordinary causes whereby the volume of the water is increased or diminished, such as unusual floods or droughts, and unusual winds, which have a considerable effect on the tidal—and particularly the upper tidal—portions of the river. So far as the tide flows and reflows I include, as part of the bed, the soil or ground lying below high water mark at ordinary tides."

Thus the principle of defining the bed in a non-tidal and a tidal river was held to be the same, viz., that the bed is to be measured by the ordinary state of the water. With much diffidence, and with the greatest deference, it is submitted that this decision, except in so far as it is a decision as to the meaning of the words "bed of the Thames" as found in the *Conservancy Acts*, is not altogether sound. The dicta of the learned Judges, however, lay down the law as applying generally to all rivers of the same nature as the Thames, viz., being partly tidal and partly non-tidal. With regard to the non-tidal part of a river, the measurement of the bed by the ordinary state of the water is reasonable and practical, because the river consists of two elements, viz., the bed and the banks, and the boundary of the bed must be found somewhere between the *filum* and the top of the bank on either side; but when we come to the tidal part of the river different considerations arise. In the non-tidal river there are two elements only, viz., the bed (*fundus*) and the bank (*ripa*); there is no intermediate hereditament between them like the "shore" or "foreshore." In the tidal river we have—(a) the bed (*fundus*); (b) the shore (*littus*); and (c) the bank (*ripa*). If this decision is right we have this singular result, viz., that in non-tidal waters the middle of the bed is the *medium filum aque*, whilst in tidal waters it is not so. If the bed of the river in tidal waters is the soil between the low-water marks, then the *medium filum aque* will be equivalent to the *filum* of the bed, as it is in non-tidal waters; but if the "bed" of a tidal river is held to be the soil between the high-water marks, the *filum* of that bed will be a line differing altogether from the *filum* of the water, and will be inconsistent with the marking of the boundaries of foreshores and fisheries in that bed. Lord Hale (*n*) clearly shows that

n) First Treatise; Moore on Foreshore, p. 354.

the *filum aque* as a boundary is to be taken at *low water*, and not at high water. He says: "But most certainly at this day, and for all tyme whereof the memory of man is not, the *filum aque Sabrinae*, or the middle course of the streame or channel at *low water*, is the constant boundary of the manors on every side, let it change its course as often as it will and as much as it will" (o). It is clear that the *filum aque* taken at low water is the mid-line of a tidal river. The Duke of Lancaster, as lord of the fee of Halton, had a right to have the *filum* of the Mersey kept open so as to leave passage for him and his men in a boat with eight oars of a length of eight feet outside the boat at the *lowest of the water* (p). The manors on the Mersey and the Dee are all bounded at the mid-stream (q), and the case is the same in other estuarial rivers. It would appear that the learned Judges have been misled in *The Conservators of the River Thames v. Smeed* by a consideration of what was the "ordinary state of the water" in tidal estuaries, and have adopted the ordinary state of the water of the *sea* instead of the ordinary state of the water of the *river* as the limit of the bed of the river. The Legislature, in passing the Sea Fisheries Act, 1868, sect. 69, appears to have taken a different view. Power was thereby given to the Board of Trade to make orders for the establishment of oyster and mussel fisheries on the *shore* and *bed* of the sea, or of an estuary or tidal river above or below or partly above and partly below low water mark. The Attorney-General, in Crown informations, distinguishes between the right of the Crown to the foreshore and its right to the "bed" of the sea. The boundary of the "bed," on the banks on either side, is to be sought for between the top of the bank at high water and the *filum* of the river at low water. At high water, according to this decision, the "bed" will consist of all land covered with water at high water of ordinary *tides*, *i.e.* by the water of the *sea*, not the waters of the river. Now, if we seek for the "*filum aque*," or "thread," or "mid-stream" of the tidal river, in what manner shall the line of it be drawn? If it is the *filum* of the "bed" of the tidal river, as it is in the non-tidal, and that bed extends to the ordinary high water mark on either side, it is obvious that this "mid-line" in an estuary, where the low water channel winds and twists first on one side and then on the other, will be a line following the contours of the banks at ordinary high water mark, and not the contour of the foreshore at ordinary low water mark, and will not in any sense

(o) First Treatise, p. 353; De Jure Maris, pp. 403, 405.

(p) Quo Warranto Rolls. Cheshire, 31 Edw. III., Duchy of Lancaster Chancery Roll, No. 45, 20 Sept. 16 Edw. IV.

(q) Moore on Foreshore, pp. 153, 154, 167, 168.

be the *filum aque* at all except at high water. A glance at an Admiralty chart of any tidal estuary will show this. Such a mid-line will at low water cut off pieces of the foreshore on one side of the low water channel from the main land, and also on the other side, and will be an entirely unpractical line, and an impossible one to mark the boundary of fisheries or foreshores between opposite manors. The foreshore is "that land which lies from time to time between the ordinary high and low water marks" (*r*). It is therefore impossible to suppose that in tidal rivers there is no distinction between the bed (*fundus*) and the shore (*littus*); and are we not driven to the conclusion that in tidal estuaries the bed (*fundus*) of the river is that channel which carries out the natural function of the upper river, viz., the discharging of the land water flowing down in the course of nature to the sea when not affected by the tidal influence in raising the tidal waters of the sea, and holding back temporarily the land waters coming down the river. In short, does not a tidal river consist of different areas at different periods? When it is low water it consists of—(1) the bed of the river; (2) the foreshore or shore (*littus*) of the river bounded by the bank (*ripa*) above ordinary high water mark. When it is high water it is an arm of the sea in which the bed and the foreshore are submerged. The foreshore is such only because it is affected by the flowing of the tide, otherwise it would be the "*ripa*" or bank of the non-tidal river. Its existence as foreshore is not due to the action of the river bringing down land water; it is due to the action of the sea flowing over it, and as it owes its existence to the sea and not to the river, can it be said that it is part of the "bed" (*fundus*) of the river? It is submitted that it cannot, and that it is not part of the bed of the river.

Then if the bed (*fundus*) of the tidal river be taken to be that which lies between the ordinary low water marks on either side in which the river flows when delivering its land water to the sea, there will be no difficulty in finding the *filum aque*, or thread of the river, in such a way that it will form an easily ascertainable boundary between the foreshores and the fisheries thereover—a boundary consistent with the ownership of the foreshore on either side of it, and consistent with all the principles of the law of accretion, and consistent with what we know of such boundaries in tidal estuaries as the Severn. See Hale, *De Jure Maris* (pp. 384, 403, and 405, concerning islands). This mid-line no doubt will vary with the change of the current of the river between its foreshores and between the marks of ordinary low water on either side from time

to time; but it will be an ascertainable line by which owners of foreshore and owners of fisheries and islands can ascertain their boundaries by simple observation. Access to the foreshores and fisheries from either side will be easy and natural, and the property in them may be possessed without danger of dispute as to any arbitrary line, such as must be the case if the line is to be drawn midway between the ordinary high water marks. It is submitted that the river in tidal estuaries is the river at low water, and the bed of the river is bounded by the foreshore on either side, just as the bed of the non-tidal river where there is no foreshore is bounded by the bank at the ordinary state of the water (s).

(s) See the case of *Miller v. Little*, (1878) 4 L. R. Ir. 302, where the *river* in an estuary was dealt with as a river at the low water state of the tide.

CHAPTER XXI.

OF CHANGE IN THE COURSE OF A RIVER, AND ITS EFFECT UPON THE OWNERSHIP OF THE FISHERY THEREIN.

AN early statement of the law as to the effect of the change in the course of a river occurs in the Year Book, Assizes 22 Edward III., fol. 106, pl. 93. The printed text is corrupt; but, comparing it with four MSS. (*a*), the entry is as follows:—

“If a water runs between two lordships, of which the water and the whole stream (*fountayn*) belongs to one lord, if this water by little and little diminish the soil of that lord to whom the water was not, and increase the soil of the other, so that the channel of this water is removed towards him out of its course upon the soil of the other lord in part or in the whole; still this water, with the whole stream (*fountayn*), belongs to the lord to whom it first was, if this increase of the water has been so gradual (*si celement*) that none can perceive it nor clearly see (*ne voir bonnement*) the increase, as it has increased by process of time as in many years, and not in one year nor in one day; and if certain bounds be not put and found before whereby one can perceive this increase (*b*). But if it has increased suddenly by force of a flood, this takes away from one lord part of his soil, whereby the soil of the other lord increases on the other side of the water; in such sudden increase no man ought to lose his soil, if the river be not an arm of the sea, where he will not have the water with his soil: and *quere* albeit, that the soil is increased by an arm of the sea shall he lose his soil? but I believe that he shall not. And note that every water that flows and reflows is called an arm of the sea so far upward as it flows. And note that Thorpe, J., said that if a water which is a highway by increase of the water, or by force of the same change its course on to another soil, still it is also highway there where this water is as it was before, in its ancient course, so that the lord of that soil cannot disturb this new-made course. Adjudged in the Eyre of Nottingham.”

Lord Hale (*c*) deals with this entry as follows: “If a fresh river

a) MS. Reg. B. Mus. 19 A. xiii. f. 33, MS. Addit. 22,554, MS. Egerton, 748, p. 23, MS. Harl. 811, f. 46 b.

b) “Et ei certaines boundes ne soient mis et troves, dont l'ouure puit apercevoir en ierreas.” Two MSS. read *deuant que l'ouure puit apercevoir*, &c. N.B.—This passage is incorrectly translated, *Foster v. Wright*, (1878) 4 C. P. D., at p. 442.

c) De Jure Maris, cap. i. p. 371.

between the lands of two lords or owners (*d*) do insensibly gain on one or the other side, it is held, 22 Ass., pl. 93, that the propriety continues as before in the river. But if it be done sensibly and suddenly, then the ownership of the soil remains according to the former bounds. As if the river running between the lands of A. and B. leave his course and sensibly makes his channel entirely in the lands of A., the whole river belongs to A.; *aqua cedit solo*: and so it is, though if the alteration be by insensible degrees, but there be other known boundaries as stakes or extent of land: 22 Ass., pl. 93. And though the book makes a question whether it hold the same law in the case of the sea or owners of it, yet certainly the law will be all one, as we shall have occasion to show in the ensuing discourse. But yet special custom may alter the case in great rivers. For instance, the river of Severn, which is a wild river; yet, by the common custom used below Gloucester Bridge, it is the common boundary of the manors of either side, what course soever the river takes; viz., the *filum aquæ* is the common mark or boundary, though it borrow great quantities of land, sometimes of one side, sometimes of the other, and give them to the opposite shore."

The authorities were discussed as to the case of a tidal river in the case of *Mayor of Carlisle v. Graham* in 1869 (*e*). In this case the corporation, as grantees of the Crown, were entitled to a several fishery in a part of the river Eden, which formed a bend or loop of the river. About 1693 the water of the river began to recede from the loop and to pass up and down a passage which had up to that time been merely a ditch with very little water in it, and at parts entirely dry, which was called "the Goat." The soil of the Goat and the lands on both sides of it and the fishery, and the fishery throughout the whole course of the river from the lower end of the Goat to the sea, belonged to the Lowther family and the Earl of Lonsdale, under whom the defendant claimed. By slow degrees and imperceptibly the river altogether shifted its course from the loop to the goat, and the loop dried up. The question was whether the corporation could follow their fishery in the new channel formed by the river where the lands on both sides belonged to a subject. It was held that they could not. Chief Baron Kelly in his judgment says:—

"In the case of *Murphy v. Ryan* (*f*), O'Hagan, J., in delivering

(*d*) It is to be remarked that Lord Hale omits to notice that the case in the Year Book relates to a river running between two lordships where the river and bed belongs wholly to *one* of the two lordships, but he treats it as if the lordships had a boundary in the river to the mid-stream, and his reference to the "special custom" in the Severn is really no special custom in the case of manors bounded by the mid-stream, but the common law.

(*e*) L. R. 4 Exch. 361.

(*f*) (1868) Ir. Rep. 2 C. L. 143.

the judgment of the Court, says : ‘ But whilst the right of fishing in fresh-water rivers in which the soil belongs to the riparian owners is thus exclusive, the right of fishing in the sea, its arms and estuaries, and in its tidal waters wherever it ebbs and flows, is held by the common law to be *publici juris*, and so to belong to all the subjects of the Crown ; the soil of the sea, and its arms and estuaries and tidal waters, being vested in the Sovereign as a trustee for the public. The exclusive right of fishing in the one case, and the public right of fishing in the other, depend upon the existence of a proprietorship in the soil of the private river by the private owner and by the Sovereign in a public river respectively. And this is the true principle of the law touching a several fishery in a tidal river. If, therefore, the right of the Crown to grant a several fishery in a tidal river to a subject is derived from the ownership of the soil, which is in the Crown by the common law, a several fishery cannot be acquired even in a tidal river if the soil belong not to the Crown, but to a subject. And all the authorities, ancient and modern, are uniform to the effect that if, by the irruption of the waters of a tidal river, a new channel is formed in the land of a subject, although the rights of the Crown and of the public may come into existence and be exercised in what has thus become a portion of a tidal river or of an arm of the sea, the right to the soil remains in the owner ; so that if at any time thereafter the waters shall recede, and the river again change its course, leaving the new channel dry, the soil becomes again the exclusive property of the owner, free from all rights whatsoever in the Crown or in the public.’ (See Hale, *De Jure Maris*, pars prima Hargrave’s Tracts, pp. 5, 6, 11, 13, 16, 37.)

‘ If, then, the title of the corporation to the fishery is derived from a grant by the Crown, and the title of the Crown to grant from the ownership of the soil, how can the corporation claim a right to the fishery in the Goat, where the soil does not and never did belong to the Crown ? ’

As, therefore, there could only be a public right of fishing, or a several fishery created by the exclusion of that public right, in waters flowing over soil vested in the Crown, and as the soil of the Goat was not so vested, the change in the course of the river could not give the several fishery to the corporation nor give the public any right to fish over the soil of the owner of it, notwithstanding that the tidal water had forced its passage over it (g).

(g) In the case of *O’Neill v. M’Erlaine*, 1864, 16 Ir. Ch. R. 280, a question arose as to the right of fishery in a new artificial cut made in the river Banne in Ireland. The fishery of the river was held under grants by James I., Charles I. and Charles II., and it was held that the owner of the fishery had no right in the new cut unless it was shown to have been a branch of the river Banne at the time of the granting of the fishery.

This question was further discussed as to a fishery in a non-tidal river, and under different circumstances, as to the change in the course of the river, in the case of *Foster v. Wright* (*h*), in 1878. The plaintiff was lord of the manor of Hornby, through which the river Lune ran. He was entitled to the fishery in all the waters of the manor, *i.e.* to the whole of the stream. Some manor land on one side of the river, near, but not adjoining to it, was enfranchised, and became the property of the defendant. The river, which at that time ran wholly between lands belonging to the plaintiff, afterwards wore away its bank, and by gradual progress, not visible, but periodically ascertained and recorded during twelve years, approached and eventually encroached upon the defendant's land, until a strip of it became part of the river bed. The extent of the encroachment could be defined. The defendant went on to this strip and fished there. Mr. Justice Lindley delivered judgment as follows :—

“The question we have to determine is (*i*), whether the plaintiff's exclusive right of fishing extends over so much of the water as flows over land which can be identified as formerly part of the defendant's property.

“I am of opinion that it does. The change of the bed of the river has been gradual; and although the river bed is not now where it was, the shifting of the bed has not been perceptible from hour to hour, from day to day, from week to week, nor in fact at all, except by comparing its position of late years with its position many years before. Under these circumstances, I am of opinion that, for all purposes material to the present case, the river has never lost its identity, nor its bed its legal owner.

“Gradual accretions of land from water belong to the owner of the land gradually added to: *Rex v. Yarborough* (*k*); and conversely, land gradually incroached upon by water ceases to belong to the former owner: *In re Hull and Selby Ry. Co.* (*l*). The law on this subject is based upon the impossibility of identifying from day to day small additions to or subtractions from land caused by the action of running water. The history of the law shows this to be the case. Our own law may be traced back through Blackstone (*m*), Hale (*n*), Britton (*o*), Fleta (*p*), and Bracton (*q*), to the Institutes of Justinian (*r*), from which Bracton evidently took his exposition of the subject. Indeed, the general doctrine, and its application to

(*h*) (1878) 4 C. P. D. 438.

(*i*) *Ibid.*, 446.

(*k*) (1824) 3 B. & C. 91; 5 Bingham, 163.

(*l*) (1839) 5 M. & W. 327.

(*m*) II. c. 16, pp. 261, 212.

(*n*) De Jure Maris, c. 1, 6.

(*o*) Book ii. c. 2.

(*p*) Book iii. c. 2, p. 6.

(*q*) Book ii. c. 2.

(*r*) Inst. ii. 1, 20.

non-tidal and non-navigable rivers in cases where the old boundaries are not known, was scarcely contested by the counsel for the defendant, and is well settled; see the authorities above cited. But it was contended that the doctrine does not apply to such rivers where the boundaries are not lost; and passages in Britton, in the Year Books, and in Hale, *De Jure Maris*, were referred to in support of this view; *Ford v. Lacy* (t) was relied upon in support of this distinction. Britton lays down as a general rule that gradual incroachments of a river enure to the benefit of the owner of the bed of the river; but he qualifies this doctrine by adding, 'if certain boundaries are not found.' The same qualification is found in 22 Ass., pl. 93, which case is referred to in Hale, *ubi supra*. But curiously enough, this qualification is omitted by Callis in his statement of the same case (see Callis, p. 51); and, on its being brought to the attention of the Court in *In re Hull and Selby Ry. Co.*, the Court declined to recognise it, and treated it as inconsistent with the principle on which the law of accretion rests. Lord Tenterden's observations in *Rex v. Yarborough* are also in accordance with this view; and, although Lord Chelmsford, in *Att.-Gen. v. Chambers* (s), doubted whether, where the old boundaries could be ascertained, the doctrine of accretion could be applied, he did not overrule the decision of *In re Hull and Selby Ry. Co.*, which decided the point so far as incroachments by the sea are concerned.

"Upon such a question as this I am wholly unable to see any difference between tidal and non-tidal or navigable or non-navigable rivers; and Lord Hale himself says there is no difference in this respect between the sea and its arms and other waters: *De Jure Maris*, p. 6. The question does not depend on any doctrine peculiar to the royal prerogative, but on the more general reasons to which I have alluded above. In *Ford v. Lacy* (t), the ownership of the land in dispute was determined rather by the evidence of continuous acts of ownership since the bed of the river had changed, than by reference to the doctrine of gradual accretion, and I do not regard that case as throwing any real light on the question I am considering.

"Supposing, therefore, that the plaintiff's right to fish in the Lune depends on his ownership of the soil of the river bed, I am of opinion that the plaintiff has that right; for, if he was the owner of the old bed of the river, he has day by day and week by week become the owner of that which has gradually and imperceptibly become its present bed; and the title so gradually and imperceptibly acquired cannot be defeated by proof that a portion of the bed now

s (1859) 4 De G. & J. 69—71.

(t) (1861) 7 H. & N. 151.

capable of identification was formerly land belonging to the defendant or his predecessors in title.

“But, supposing the plaintiff’s right of fishing not to have been the consequence of his ownership of the soil—supposing him to have had only a right to fish in the Lune—I am of opinion that he has the same right of fishing in the river in its present bed as he had of fishing in the river in its old bed. I am wholly unable to see upon what principle a change in the course of a river, so gradual that it cannot be perceived until after the lapse of a long interval of time, can affect the rights of those entitled to use it, whether for fishing or any other purpose; nor is there any other authority for holding them to be affected thereby. *The Mayor of Carlisle v. Graham (u)* is no such authority; for in that case the old and the new beds of the river existed as two distinct beds: the new bed was not, as here, formed by the old one gradually shifting its place; there, the water gradually left the old bed, and followed an entirely new course always distinguishable from the old; whilst here, there has been and is only one bed, and its change of place has only become perceptible after the lapse of years. The physical changes are totally different in the two cases.

“Whether, therefore, the exclusive right of the plaintiff to fish in the river in question is an incident to his ownership of the soil, or is independent thereof, I am of opinion that he is still entitled to such exclusive right in the river as it now exists, and as it will exist if it continues gradually to change its course; and consequently I am of opinion that judgment ought to be entered for the plaintiff.”

In this case there was no decision as to the ownership of the bed of the river; but as the river was a several fishery originally parcel of the manor the soil of the river must have been in the owner of the fishery.

The decision in this case cuts down the statement of the law in the Year Book and in Hale, viz., that the doctrine of accretion and dereliction does not apply to non-tidal rivers where the boundaries of the land eaten away are *not lost*. The Year Book says that imperceptible increase changes the boundary of the water “if none can perceive nor clearly see the increase as it accrues from time to time, as in many years, and not in a year nor in a day, and if certain bounds be not put and found” (*et ei certaines boundes ne soient mis et troves, dount homme puit apercevier ceo encreas*—or in another version *devaunt, que homme puit apercevier ceo encreas*). Lord Hale (p. 371) paraphrases this by the words “but there be other known

(u) (1869, L. R. 4 Exch. 361.

boundaries, as stakes or extent of land." The language of the Year Book seems to suggest that the marking or fixing of the boundary to exclude the doctrine must be made *before* or at the commencement of the encroachment by the water in order to preserve the right to the overflowed soil. Lord Hale says it is excluded if there be known boundaries, viz., stakes (*semble*, put in when the encroachment commenced) or "extent of land," which must be by showing by plan or measurement the original extent of the overflowed land. And this is what Lord Hale must mean if we compare it with his statement of the law of accretion in tidal waters, p. 381: "If a subject hath land adjoining the sea and the violence of the sea swallow it up; but so that yet there be reasonable marks to continue the notice of it; or though the marks be defaced; yet if *by situation and extent of quantity and bounding upon the firm land* the owner can be known, though the sea leave this land again or it be by art or industry regained, the subject doth not lose his propriety: and accordingly it was held by Cooke and Foster, M., 7 Jac. C. B., though the inundation continue forty years. If the marks remain or continue or *extent can reasonably be certain* the case is clear. *Vide Dy. 326, 22 Ass. 93.*" See also Hale, p. 383. In *Foster v. Wright* the gradual progress of the river towards the defendant's land had been marked by the steward of the defendant's predecessor in title on a map as it encroached in the direction of the defendant's land from 1838 to June, 1843, over the intervening land belonging to the plaintiff, and also as it advanced between 1843 and 1853, when it had occupied a strip of the defendant's land and further encroachment was prevented by an embankment.

On these facts the question arises as to whether this was a sufficient record of ancient boundary. Stakes there were none; but if there had been, according to the Year Book and Lord Hale, they would have sufficed to preserve the boundary; but surely there was shown "extent of land" within Lord Hale's meaning, and also "situation and extent of quantity and bounding upon the firm land," and although there were no "marks" to "continue," yet the "extent" was "reasonably certain"—it was, in fact, absolutely shown and proved and admitted by the Judge that the land formerly part of the defendant's property could be identified. The learned Judge found (p. 446) that the shifting of the bed "has not been perceptible from hour to hour, from day to day, from week to week, nor in fact at all, *except by comparing its position of late years with its position many years before.*" Now this comparison of position is precisely what both the Year Book and Lord Hale say will suffice to presume the boundary; but because Callis (a most unsatisfactory authority), treating of grounds left by the sea and not of non-tidal

waters, refers to the passage in the Year Book, wholly omitting the qualification as to the ascertaining of the old boundaries ; and because the learned judge considered that in the case of *The Hull and Selby Railway* (x) this qualification was brought before the Court, and the Court declined to recognise it, and treated it as inconsistent with the principle on which the law of accretion rests, he decided that the qualification found in the Year Book and Lord Hale is not law, and "that the title gradually and imperceptibly acquired cannot be defeated by proof that a portion of the bed, now capable of identification, was formerly land belonging to the defendant or his predecessors in title."

In the case of *The Hull and Selby Railway* in 1839 the question was as to the Crown title to the foreshore of the river Humber. The foreshore was admitted to belong to the Crown ; but there had formerly been salt marshes called "growths" lying above ordinary high water mark, which had been gradually washed away by the tides, and were at the time of the suit part of the foreshore ; but there was no means of identifying the situation of the growths which had been washed away, and no marks or plan of the gradual encroachment, and "it had been for many years past impossible to distinguish the part of the growths so washed away from the mud and soil of the foreshore of the river." The site of these growths was claimed by the defendant on wholly untenable grounds, supported by an entirely fallacious argument. The case of *Scrutton v. Brown* (y), decided in 1824, had laid down that the foreshore is a moveable freehold, and is "not that which at the time of the grant lay between the high and low water marks, but that which from time to time shall lie between those two *termini*." It was argued that, though the subject was entitled to accretion, there was no correlative right in the Crown, that the Crown having granted the land to the *then existing* boundary of high water mark could not resume part of its grant. The fallacy here is that there was nothing to show that the high water mark extended to the "growths" *at the time of the grant* ; the presumption was the other way, viz., that the "growths" had accreted on what was formerly foreshore, and had again been washed away. The passage from Lord Hale (p. 381), "If a subject hath lands adjoining the sea," &c., was cited for the defendant, but the passage was inapplicable to the case because there were no "reasonable marks" nor marks defaced, nor could these growths be known by "situation or extent or quantity of land," nor could the "extent be reasonably certain," and

(x) 1839, 5 M. & W. 327.

(y) 1825 4 B. & C. 485.

therefore the Court took no notice of the passage (z) rather than declined to recognise it. There was no question of proving boundary. It could not be done. On an almost level shore, such as that of the Humber at this part, the line of ordinary high water mark, which would be the boundary between the "growths" and the foreshore, could not be ascertained with any regard to accuracy by the most elaborate surveying operations. In the Humber the tides are violent, and of most irregular height, being largely affected by the influence of the wind, and it would have been absolutely impossible for the defendant to have suggested a line of high water mark upon these growths to mark or maintain as a boundary. But, to test the question, let us suppose that these growths had, when they were at their fullest extent towards the river, been enclosed by a sea wall, which had afterwards been broken, but the remains of which could be sufficiently shown at the time of the suit; can it be suggested that the Court would not have taken notice of such a fact, or would have disregarded the qualification as to the preservation of boundary laid down by Lord Hale? Or, supposing that the defendant could have shown that he was in possession of those growths at a particular date, and had received rent for them, or pastured them with his cattle, and had made a lease with a plan of them as his property, and kept a record of the gradual encroachment of the sea, would this evidence have been overlooked and disregarded, and would the Court have declined to recognise Lord Hale's dictum?

Lord Chelmsford, in *Att.-Gen. v. Chambers (a)*, doubted whether, when the old boundaries could be ascertained, the doctrine of accretion could be applied; and it is submitted that Mr. Justice Lindley was hasty in deciding that in the case of *The Hull and Selby Railway* the point, so far as encroachments by the sea are concerned, was so decided. Lord Justice Lindley, in *Hindson v. Ashby (b)*, in 1896, referred to this case as follows: "In *Foster v. Wright* it was decided that the owner of a several fishery had the exclusive right to fish in a river which had gradually encroached upon and into the land of a riparian proprietor *the limits of whose land were known*. This decision was in my opinion quite right, although in one part of my judgment I may, perhaps, have gone too far. I am not, however, satisfied that I did, for in that case the river was the boundary." Seeing therefore that this most learned Judge has doubts as to the soundness of his decision, the case must not be taken to be an absolute authority that, in the case of a

z See *Hindson v. Ashby*, [1896] 2 Ch. at pp. 5 and 6, argument.

(a) (1859) 4 De G. & J. 69-71.

(b) [1896] 2 Ch. p. 11.

change in the course of a river, or an accretion or decretion on the seashore, the landowner cannot rebut the doctrine of accretion by showing the former boundaries of his land.

The principle of accretion and decretion (if such a word may be used), as distinguished from sudden overflowing and dereliction, is of course a most convenient one for the adjustment of the boundaries of property, and is deserving of every respect; but its weak part is that, like all convenient presumptions of law, which are invented to make a rough-and-ready end of difficult questions by arriving at a conclusion as to the probable facts in the absence of evidence of the facts themselves, it is apt to be taken as absolute and irrefragable in all cases, and the exceptions to the principle and the qualifications of it are too easily overlooked and forgotten. It would no doubt be very convenient and save much trouble if, as Lindley, L.J., seemed to think in *Foster v. Wright*, the qualifications and limitations of the doctrine were wholly got rid of; but, if they were, very serious injustice might easily be done, *e.g.* the case of an ancient embankment of salt marsh where the wall had been broken and the sea had gradually turned the marsh into foreshore (c).

It is submitted that the qualification of the doctrine as to proving former boundaries still exists as law, and then the question remains as to what is sufficient evidence to show the former boundary of the land after the irruption of the water and gradual eating away and overflowing of the land. What will satisfy the expressions, "boundes mis et troves," or "boundes mis et troves devaunt"; "other known boundaries as stakes or extent of land"; "certain known metes or extents"; "reasonable marks to continue the notice of it, or, though the marks be defaced, yet if by situation and extent of quantity and bounding upon the firm land the same can be known"; "yet if the certain extent or contents from the land not overflown can be evidenced though the bounds be defaced"? Must the marks be physical marks, as stakes or sea walls only? It would appear not to be so. Will not a map marking the former boundary and showing the encroachment suffice? Is it necessary that the person who will gain by the encroachment of the water must have notice of the record of the former boundary to make such record admissible as evidence? In short, what steps must an owner, who sees that an encroachment is imminent, take to protect his boundary and preserve his property? These are questions difficult to answer satisfactorily. It is clear that physical marks, as stakes, are the best records. They give notice to the owner

(c) See Hale, pp. 381, 382, and cases there cited.

of the encroaching water of the claim of the person on whose land it is encroaching, and had stakes been fixed in the case of *Foster v. Wright*, it is possible that the decision would have been different. But physical marks cannot, from the nature of things, be always resorted to. It may be impossible to fix them, or to keep them in place when fixed, and when that is so, it would seem that the only means at the disposal of the landowner, upon whose land the water is encroaching, is to make careful survey and plan, and to keep a record of the former boundary of his land and to prove it by such evidence as he can procure. Of course, in case of sudden movement of the water he is fully protected; but in the case of gradual and imperceptible movement he must not stand idly by and let it continue unnoticed and unrecorded. If he mark his boundary physically, it would seem that he is in a position to rebut the doctrine of accretion and decretion; and it is difficult to see why, when the circumstances of the case make it impossible to mark the boundary physically, he is to lose his land because he adopts the only other alternative open to him to keep a record of that boundary, viz., by making and marking a plan of the gradual movement of the water over his land.

The distinction between what is gradual and imperceptible accretion or decretion and what is not is extremely difficult to determine. It must depend in most cases upon the facts and evidence. The principle upon which it is to be determined was laid down by Willes, J., in *Lloyd v. Ingram* (d), in 1868, and was cited by Smith, L.J., in *Hindson v. Ashby* (e) as follows:—

“The whole doctrine of accretion is based upon the theory that from day to day, week to week, and month to month, a man cannot see where his old line of boundary was, by reason of the gradual and imperceptible accretion of alluvium to his land. How can this apply to a case like the present, when the whole thing is at once patent? The late Willes, J., in the case of *Lloyd v. Ingram* (the Shoreham foreshore case), there laid down the law of accretion to the jury: ‘If by gradual and imperceptible accretions in the ordinary course of the operations of nature land is added on by slow degrees to the shore’ (*Lloyd v. Ingram* had relation to the seashore; but as to this point a river stands, in my judgment, upon the same footing), ‘notwithstanding that after a certain period you may see that a body of land, however considerable, has accrued to the shore, yet if the steps by which that land is formed are steps gradual and in the ordinary course of nature, and happening from time to time, but you cannot perceive the change from step to step (if one may use that

(d) Separately reported in 1868.

(e) [1896] 2 Ch. at p. 28.

figure), then that land so gradually and imperceptibly accrued does belong to the owner of the shore, and is given to him by the law as his property. I say gradual and imperceptible. . . . The question is whether the land in question was formed by sudden practical perceptible addition such as ordinary observation would recognise from time to time, or whether it was formed by gradual addition such as ordinary observation would not recognise as from step to step, but as to which from stage to stage you would say, there has been an addition that I can now perceive, to the place in question.' "

In the case of *Att.-Gen. v. Reece* (f), which related to a claim by the Crown to accretion at Lowestoft, the accretions had been measured and noted through a long course of years as they took place, the sea sometimes encroaching and sometimes retiring; and on this evidence it was held that the accretions were perceptible, and that therefore they did not belong to the adjoining owner.

The case of the change in the course of a river, considered in *Foster v. Wright*, was one where the whole of the river and fishery belonged to one owner.

The result of the cases appears to be that where the change in the course of a river is sudden and perceptible, as distinguished from gradual and imperceptible, the right to the fishery does not follow the new channel so suddenly created. When the change is gradual and imperceptible the boundaries of the fisheries and the extent of the rights of the fishery owners respectively will change as the river changes, subject always to the question as to how far in particular cases there exists evidence of the original boundaries sufficient to rebut the application of the doctrine of accretion. Whether the change has been caused gradually and imperceptibly, or otherwise, must of course depend upon the facts of each particular case, and must be decided on the principles of the law of accretion (g).

It would appear, therefore, that (apart from the question in what manner the doctrine of accretion may in certain cases be rebutted by evidence as to the original boundaries), when a non-tidal river gradually and imperceptibly changes its course, the ownership of the soil of its bed and the fishery over it will shift as the river shifts. If it be the property of one person it will remain so in its newly acquired course. If the fishery belongs to the proprietors on the two opposite banks to the mid-stream, the line of the *filum aque*, which is the boundary of their respective rights, will change as the river changes, and the line is to be ascertained by taking the mid-line between the

(f) (1885) 1 Times L. R. 675.

(g) See Hale, *De Jure Maris*, cap. vi.; Gould on Waters, sects. 76, 77, 155—159; Woolrych on Waters, c. ii.; Stuart Moore on Foreshore, and cases cited *ante*.

lines on the banks of the river which mark the ordinary and usual flow of the river unaffected by freshets or by extreme droughts.

In a tidal river belonging solely to one owner the fishery will follow the change of the river into the newly acquired course formed by the gradual and imperceptible change. In a tidal river owned by opposite proprietors to the mid-stream the fisheries will extend to the *filum aque*, and shift as to boundary as that *filum aque* shifts; but in this case, unlike the case of a non-tidal river, the *filum aque* will be ascertained by taking the mid-stream of the river at ordinary low water mark, leaving half the bed (*fundus*) of the river and all the foreshore on either side in the respective fisheries of the opposite proprietors; for the bed of a tidal river is its bed at low water time when unaffected by the tidal influence of the sea (*h*). If a tidal river, the fisheries in which belong to opposite proprietors to the middle of the channel, changes its course and forms a new channel, the *medium filum* of the new channel will be the boundary of the fishery, and not a landmark corresponding to what had been the *medium filum* of its former course.

(*h*) *Miller v. Little*, (1878) 2 L. R. Ir. 304; 4 L. R. Ir. 302; see *ante*, pp. 120—122.

CHAPTER XXII.

OF GRANTS OF FISHERIES.

GRANTS of fisheries are all, or nearly all, ancient documents, and come within the class of documents which are now construed upon the principles laid down in the cases of *Waterpark v. Fennell* (a), *Duke of Beaufort v. Swansea* (b), *Duke of Devonshire v. Pattinson* (c), viz., that “all ancient documents where a question arises as to what passed by a particular grant, can be explained by modern user” [per Lord Wensleydale]. In *Pattinson’s Case* the grants in question were dated 1767 and 1846. This established principle of construction, which is founded on the soundest of common sense, makes it unnecessary for us to have resort to the various ancient dicta which we find in text-books as to what will pass by particular expressions in a grant. These dicta conflict to some extent, and the most important of them, that of Lord Coke, has been overruled. It will, however, be well to discuss them in order to prevent the recurrence of elaborate arguments based upon them in the future.

In *Throckmorton v. Tracy* (d) it is stated that “the word *stagnum* is a word compounded of land and water, and contains both, and the words *aqua et piscaria* consist of the water and the land which a man shall have by a grant of the said words, as it was adjudged in *The Earl of Derby*, 4 Edward III.” This supports the contention that by the grant of a fishery the soil passes.

Coke (e) states: “If a man be seized of a river, and by deed do grant *separalem piscariam* in the same, and maketh livery of seizin *secundum formam chartæ*, the soil doth not pass, nor the water, for the grantor may take water there; and if the river become drye, he may take the benefit of the soile, for there passed to the grantee but a particular right, and the livery, being made *secundum formam chartæ*, cannot enlarge the grant. For the same reason, if a man grant *aquam suam*, the soile shall not pass, but the pischary within the water passeth therewith.”

(a) (1859) 7 H. L. C. 650.

(b) (1849) 3 Exch. 413.

(c) (1887) 20 Q. B. D. 263.

(d) (1555) Plowden, 151.

(e) Co. Litt. 4 b.

This dictum of Coke is inaccurate, and has been overruled (*f*). It was put forward for the Crown in *Att.-Gen. v. Emerson* (*g*), but was treated as overruled. Coke, in declaring that the fishery so granted must be incorporeal, seems to have overlooked the fact that livery of seizin is inapplicable to an incorporeal hereditament (*h*). He also fails to note that there can be no property in the water of a river (*i*). In the case of *Marshall v. Ulleswater Company* (*k*), on a discussion of the question whether a grant of a fishery passed the soil, the majority of the Court, Wightman and Mellor, J.J., held that a grant of a several fishery, together with livery of seizin, reserving a quit rent of 4*l.* a year to the then lord of the manor, must, in the absence of evidence to the contrary, be taken to convey a corporeal, and not an incorporeal, inheritance, as a feoffment with livery of seizin and the reservation of a quit rent are not appropriate to an incorporeal estate, and that, therefore, the soil passed by the grant. Cockburn, C.J., though holding himself bound by the case of *Holford v. Bailey*, was of a different opinion. After citing the opinion of Lord Coke, to the effect that a grant of a several fishery does not pass the soil, he proceeds (*l*) : " Now, independently of the high authority of Lord Coke on such a matter, I must say that this doctrine appears to me the only one which is reconcileable with principle or reason. It is admitted on all hands that a several fishery may exist independently of the ownership of the soil in the bed of the water. Why, then, should such a fishery be considered as carrying with it, in the absence of negative proof, the property in the soil? On the contrary, it seems to me that there is every reason for holding the opposite way. The use of the water for the purposes of fishing is, when the fishery is united with the ownership of the soil, a right incidental and accessory to the latter ; on a grant of the land, the water and the incidental and accessory right of fishery would necessarily pass with it. If, then, the intention be to convey the soil, why not convey the land at once, leaving the accessory to follow? Why grant the accessory that the principal may pass incidentally? Surely such a proceeding would be at once illogical and unlawyerlike."

The answer to the Chief Justice's observations is that in common

(*f*) *Partridge v. Mason*, (1774) 2 Chitty, 258 ; Lofft, 364 ; *Smith v. Kemp*, (1692) 2 Salk. 637 ; Sheppard's Touchstone, Ed. 1820, f. 97 ; *Holford v. Bailey*, (1848) 8 Q. B. 1000, at p. 1016 ; 13 Q. B. 426 ; *Marshall v. Ulleswater*, (1863) 3 B. & S. 732 ; 41 L. J. Q. B. 41 ; 25 L. T. 793.

(*g*) [1891] A. C. 649 ; *Hindson v. Ashby*, [1896] 2 Ch. 1.

(*h*) See Sheppard's Touchstone, Ed. 1820, p. 97.

(*i*) *Embrey v. Owen*, (1851) 6 Exch. 369.

(*j*) (1863), *ibi supra*.

(*k*) 3 B. & S. at p. 747.

and ordinary parlance a man, holding a river in his manor, would speak of it as his "fishery," not as his "land covered with water," and by his fishery he would mean the river and the weirs and engines situate in it, and therefore his soil covered with water and the profits of it; and this he would intend to grant by describing it very naturally as "*piscariam suam*," just as he might grant "his forest," "*forestam suam*," meaning to convey the soil and the trees and the deer therein and all things belonging to it as a forest. He would not describe it as his "land covered with trees."

In *An Alderman of London v. Hastings* (*m*), it was decided that "if a man grant *liberam piscariam* the grantee has free fishing with the grantor; but if he grant *piscariam suam* without saying more the whole fishery shall pass." Therefore, if the grantor was seized of the river and the fishery the soil will pass by the grant of the fishery, and all subsequent authorities agree with this. We may, therefore, conclude that by the grant of a fishery the soil *primâ facie* passes. Whether the grantor in each particular case had a fishery including the soil or not may be a question of evidence to be determined by the user; but it is now well settled that the owner of a fishery, in the absence of evidence to the contrary, is presumed to be the owner of the soil (*n*).

Coke's erroneous dictum has been reproduced by all text-writers (except Lord Hale), and the constant reiteration of it no doubt accounts for the common opinion current amongst lawyers until quite recently that a fishery is generally an incorporeal hereditament. If his dictum had been accurate no doubt there would have been a good foundation for such general opinion, because only such fisheries as had remained in their original state and condition as parcels of the manors within which they were situate could now be fisheries with the soil; for the moment the lord of the manor granted out his fishery as his "several fishery," the right of fishing would, according to Coke, have been severed from the ownership of the soil and have become an incorporeal hereditament, unless the grant had been a grant of his "several fishery and the soil and water thereof," a form of grant scarcely ever met with except in modern documents where the conveyancer, conscious of the doubt raised by Coke's dictum, has inserted the reference to the soil and water *pro majori cautela*. Grants of fisheries by the Crown usually describe the fishery as "all that our fishery" or "all that our several fishery," &c., and a long experience of such documents does not present an example of a grant of a "river," or of "land covered

(*m*) (1657) 2 Sid. 8.

(*n*) *Att.-Gen. v. Emerson*, [1891] A. C. 643; *Hindson v. Ashby*, [1896] 2 Ch. 1.

with water," or of "a fishery with the soil and water thereof," or any such similar expression, in any royal grant. These grants have been constantly construed as passing the soil upon showing evidence of user of the soil as well as the right of fishing under them.

Since Lord Coke's dictum is overruled, and since we have seen that the word "libera" has the same meaning as "separalis," it would appear that, on the authority of *Throckmorton v. Tracy* (o) and *An Alderman of London v. Hastings* (p), a grant or conveyance of a fishery, whether described as a "several fishery" or as a "free fishery," or simply as a "fishery," must be construed *prima facie* as a grant of the fishery with the soil, unless the evidence of user by which such grant is to be interpreted shows that it is an incorporeal right.

(o) (1555) Plowden, 151.

(p) (1657) 2 Sid. 8.

CHAPTER XXIII.

OF EVIDENCE OF TITLE TO FISHERIES.

IN proving a title to a fishery in tidal water it is necessary either to show that it existed before the time of King Henry II., or to show evidence of its existence which will raise the presumption that it lawfully existed at that time. The effect of such evidence is thus stated by Willes, J., in the case of *Malcolmson v. O'Dea* (a). "If evidence be given of long enjoyment of a fishery to the exclusion of others of such a character as to establish that it has been dealt with as of right as a distinct and separate property, *and there is nothing to show that its origin was modern*, the result is, not that you say, this is usurpation, for it is not traced back to Henry II., but that you presume that the fishery, being reasonably shown to have been dealt with as property, must have been created before legal memory" (b). But if it can be gathered from the evidence that the origin of the fishery claimed was modern and later than Henry II., the claim to the fishery will fail (c).

There is, and can be, no certain rule as to how far back it is necessary to show evidence of the existence and user of a several fishery in tidal waters in order to raise the presumption of a legal origin. In the case of *Tighe v. Sinnott* (d), the existence of a several fishery was proved by an inquisition taken in 1540, which was identified by subsequent instruments of title under which the plaintiff claimed, and it was held that he had established his right. In *Malcolmson v. O'Dea* (e), a Crown grant of a fishery by Queen Elizabeth was held to be evidence of legal origin. In *O'Neill v. Allen* (f), the existence of the fishery at the mouth of the river Banne was proved between 1659 and 1701, and was held to be sufficient to raise the presumption of a legal origin. Non-user or absence of proof of user from 1701 to 1799 did not affect the claim.

(a) (1862) 10 H. L. Cas. 593.

(b) See *Neill v. Duke of Devonshire*, (1882) 8 A. C. at p. 158.

(c) See *Edgar v. Commissioners of Fisheries*, (1871) 23 L. T. N. S. 733.

(d) [1897] 1 Ir. R. 140.

(e) (1862) 10 H. of L. Cas. 593.

(f) (1859) 9 Ir. C. L. 142.

A merely modern title would seem to be insufficient (*g*), but where the owner's title deeds do not go far back, a search amongst the public records will almost always produce evidence of the ancient existence of the fishery sufficient to raise the necessary presumption of a lawful origin. The existence of a weir before 1861 in a fishery in tidal waters affords very strong evidence of the antiquity of the title, because by the various statutes relating to weirs from statute 25 Edward III. c. 4, downwards, weirs have been made illegal except those legally in existence in the time of Edward I. (*h*).

When, however, the evidence of modern user is weak, and does not go back beyond the period of living memory, and there is no ancient evidence to show the existence of the fishery before or after the time of King Henry II., it has been held that the inference of a lawful origin may be rebutted. The case of *Edgar v. The Special Commissioners of Fisheries* (*i*), in 1871, raised the question of a title to have a "raise net" as an ancient fixed engine at Rockliffe, in the tidal water of the river Eden. The evidence of user was weak. There was no ancient evidence of the existence of a fishery, and there was a survey of Lord Dacre's lands, made in the time of Elizabeth (Lord Dacre being a predecessor in title of the claimant), which did not mention the fishery. Willes, J., confirmed the law as to presuming a lawful origin laid down in *Malcolmson v. O'Dea*; "but," he said, "it will not do to prove thirty years' enjoyment of such a right, commencing at the beginning of thirty years, or commencing at any other given period later than the end of the reign of Henry II., and for this reason: because as soon as you show that the origin was later than the time of King Henry II., you negative the inference of the usage for that period, which inference is the foundation of the conclusion that there was a grant as early as Henry II.," and he remarked that the inference is rebutted. "That is ordinarily shown in cases of this description by referring to some probably true account of the state of the title during the intermediate period, omitting all mention of the right, especially when the right is of sufficient importance to have been mentioned, or the history of it had really existed at the time, and that is proved, as it appears to me, by parol evidence in this case."

(*g*) *Holford v. George*, (1867) L. R. 3 Q. B. 639. is not in point here. The several fishery was proved and the question was whether a five years' user of a particular kind of engine makes the use of the engine lawful. See also *Rawstorne v. Backhouse*, (1867) L. R. 3 C. P. 67.

(*h*) *Williams v. Wilcock*, (1838) 3 N. & P. 606; 8 A. & E. 314; *Gann v. Free Fishers of Whitstable*, (1865) 11 H. L. C. 192; 35 L. J. C. P. 29; *Rawstorne v. Backhouse*, (1867) L. R. 3 C. P. 67; *Holford v. George*, (1867) L. R. 3 Q. B. 640; *Rolle v. White*, (1868) L. R. 3 Q. B. 286; *Leconfield v. Lonsdale*, (1869) L. R. 5 C. P. 657.

(*i*) (1871) 23 L. T. N. S. 733.

It was at one time argued that a several fishery in tidal water, being supposed to be in the nature of a franchise, would merge in the Crown on a forfeiture or attainder of the owner, and could not be regranted. This contention was displaced in the case of *Duke of Northumberland v. Houghton* (*k*), in 1870, and was finally disposed of by Lord Blackburn's judgment in 1882, in *Neill v. Duke of Devonshire* (*l*).

Title to a fishery in non-tidal waters need not be proved back to ancient times any more than title to any other kind of property. Still it is often desirable to show the earlier history, and the descent of the title and condition of the fishery, in order to prove that it is a fishery with the soil, or to show its boundaries, and to prove and connect with the owners of it acts of possession and instances of preventing trespasses, &c. It is always desirable to show cases of turning off trespassers or taking proceedings against them, the absence of such evidence in a recent case (*m*) in the Court of Appeal being strongly remarked upon by Rigby, L.J., as negative evidence to show that the right claimed did not exist (*n*).

k) L. R. 5 Exch. 127. See also *Malcolmsen v. O'Dea*, 10 H. L. Cas. 594.

l) (1882) 8 A. C. at pp. 179, 180.

m) *Catercraft v. Guest*, [1898] 1 Q. B. 759.

n) See *Edgar v. Special Commissioners of Fisheries*, 1871) 23 L. T. N. S. 733.

CHAPTER XXIV.

OF EVIDENCE OF POSSESSION OF FISHERIES IN PROVING TITLE.

MERE evidence of title to a fishery, or what has been called "a paper title," is not sufficient to maintain an action against a trespasser or a person claiming an adverse right when the title is in issue without proof of possession (*a*). What amount of possession it is necessary to prove must depend upon the circumstances of each particular case; but some general principles as to the manner in which the evidence of possession is to be considered have been laid down. In the case of *Lord Advocate v. Lord Lovat* (*b*) the defendant claimed the salmon fishings in a Scotch river under a barony title. The river was divided by certain falls called the Falls of Kilmarnock. The defendant and his predecessors had fished the river principally below the falls by means of "cruives," and had practically taken the whole crop of salmon there. He had also occasionally fished above the falls and watched the river, and bound the tenants of lands in the upper part to protect the fishing. The question was whether he was entitled to the fishings above the falls, and whether the evidence of possession below the falls was sufficient to support his barony title to the whole of the river within that part of the barony. Lord O'Hagan, discussing the question of possession, said: "As to possession, it must be considered in every case with reference to the peculiar circumstances. The acts implying possession in one case may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests—all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of a possession. The dealing with a river, requiring activity and vigilance for the realisation of profit from its fisheries, may fail to give reliable evidence of this, which might be satisfactory if the stream were

(*a*) *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. at pp. 143 and 161; *Priest v. Archer*, (1887) 51 J. P. 725; *Greenbank v. Sanderson*, (1884) 49 J. P. 40; *Blount v. Layard*, [1891] 2 Ch. 678.

(*b*) (1879) 5 App. Cas. 273.

unproductive and incapable of compensating for larger effort and expenditure.

“Again, in a case like the present, it is not necessary, for the purpose of proving possession of a fishery, that the claimant of a baronial title should show the exercise of his right in every portion of the river capable of yielding fish. I adopt the opinion of the Lord Ordinary on this point: ‘I do not,’ he says, ‘mean to express or indicate any opinion to the effect that where a right to fish salmon depends on a barony title, followed by possession, it is necessary that the party pleading prescription should prove that he has regularly fished in the proper manner every part and stream in the river in which a salmon might be expected to be caught. It would be enough, in my opinion, were it proved that he substantially fished over the whole of the river within his bounds in the appropriate manner, and regularly and continually within the year throughout the prescriptive period. I would be slow to hold that if he fished certain parts regularly and others only occasionally, or not at all, he had failed to establish a right to fish in the whole.’ I differ from the Lord Ordinary as to the conclusion to which he arrived: but it seems to me that these reasonable and just observations have material value when we come to consider the evidence of the acts on which the respondent relies.”

In the case of *Neill v. The Duke of Devonshire* (c), Lord Selborne, dealing with the question of evidence of possession, says: “If the fishery of the whole river was what has been sometimes called a ‘*unum quid*,’ there can be no doubt that evidence of acts of ownership and enjoyment in any part of it would be applicable to the whole.” Lord O’Hagan, at p. 165, says: “The proof of possession of an extensive tract of land or a great river such as this, must, of course, vary according to circumstances. What may demonstrate it, in one case, may be quite inadequate for that purpose, in another. The ordinary mode of user of properties of the kind—the circumstances requiring or excusing particular modes of action with reference to it, the courses which its owner, conscious of his rights, might be reasonably expected to pursue in the assertion and protection of them—may be indefinitely various, and must all be considered according to their nature when the fact of his possession, as proved by his conduct, comes to be ascertained. The proprietor of a river or a waste cannot be expected to prove proceedings indicative of his ownership on every portion of the one or the other. He can only show his exercise of dominion over certain parts in accordance with a claim of title to the whole; and whether as to the whole, evidence

(c) (1882) 8 App. Cas. at pp. 151 and 165.

as to the parts can justly found the desired inference, must be determined by its character and extent and the effect which can be fairly given to it by an informed tribunal. And if a river can be taken to be, as described in not very elegant jargon, a *unum quid*, a connected and unbroken entirety, such evidence, as none other of the fact of possession throughout is possible, may be in the highest degree satisfactory and decisive" (*d*).

Acts of ownership in one part of a fishery are evidence of ownership of the whole when the fishery is "*unum quid*" (*c*).

With regard to the documentary evidence of possession, as distinguished from documentary evidence merely deducing and tracing the title step by step, the authorities will show the nature of the documents which may be used. In the case of tidal fisheries, evidence of reputation is admissible, and this lets in a wider range of documents than are admissible to prove possession in the case of non-tidal fisheries, where evidence of reputation is not admissible (*f*).

The classes of documents that have been admitted on various grounds in various cases to prove possession of fisheries by predecessors in title of the claimants to them are as follows:—

Inquisitions taken by competent authority (*g*).

Proceedings in suits relating to the fishery (*h*).

Leases and counterpart leases coming from proper custody. These are perhaps the best evidence of possession (*i*).

Licenses to fish. Old licenses are admissible to prove possession, and it is not necessary to prove payment under the license: but to give weight to them it should be shown that in later times payment had been made under similar licenses, or that the owner of the fishery had exercised other acts of ownership (*k*). As

d) See also *Lord Advocate v. Young*, (1887) 12 A. C. 544, per Lord Watson.

e) *Jones v. Williams*, (1837) 2 M. & W. 326; *Neill v. Duke of Devonshire*, (1882) 8 A. C. at p. 151; *Duke of Devonshire v. Hodgett*, (1827) Hud. & B. 332; *Ashworth v. Brown*, (1860) 10 Ir. Ch. R. 421.

f) *Neill v. Duke of Devonshire*, 1882 8 App. Cas. at pp. 185 and 186, per Lord Blackburn.

g) *Rogers v. Allen*, (1808) 1 Camp. at p. 310; *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. at p. 144; *Tooker v. Duke of Beaufort*, (1758) 1 Burr. 146; *Irish Society v. Derry*, (1846) 12 Cl. & F. 641; *Foster v. Wright*, (1878) 4 C. P. D. 438.

h) *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. 152; *Rogers v. Allen*, (1808) 1 Camp. p. 310; *Malcolmson v. O'Dea*, (1862) 10 H. L. C. 594; *Calcraft v. Guest*, [1898] 1 Q. B. 759. In *Blount v. Layard*, *Smith v. Andrews* and in *Att-Gen. v. Emerson* this class of documents was admitted, though it does not appear in the reports.

i) *Bristol v. Cornillon*, (1877) 3 App. Cas. at pp. 653, 657, 668, per Lord Cairns; *Pogues v. Allen*, (1808) 1 Camp. at p. 311; *Neill v. Duke of Devonshire*, 1882) 8 A. C. pp. 148—150. In *Blount v. Layard* many old leases were proved. Hale, *De Jure Maris*, p. 404.

j) *Rogers v. Allen*, 1808 1 Camp. p. 311; *Neill v. Duke of Devonshire*, 8 A. C. at pp. 148—150, 162, 167; *Musgrave v. Inclosure Commissioners*, (1874) L. R. 9 Q. B. 162.

to the distinction between license and lease, see *Fitzgerald v. Firbank* (l).

Entries in old corporation books showing rent due from a fishery (m).

Demises by copy of Court roll (n).

Ancient surveys of manors (o).

Declarations of deceased persons in the case of a tidal fishery (p).

Ministers, bailiffs, and collectors' accounts showing receipt of rent or profit from fisheries. Ancient documents of this character need not be signed by the accountant (q).

Convictions (r).

Presentments on Court rolls of unlawful fishing (s).

Land tax assessment books to show the assessment of the fishery (t).

Poor's rate assessments to show the occupation and ownership of the fishery (u). If a fishery be found to have been assessed to a rate before the Rating Act, 1874 (37 & 38 Vict. c. 54), it will be evidence that the fishery was a corporeal hereditament, as the incorporeal right of fishing was not rateable before that Act.

Tithe assessment and the tithe map and award, and the payment of tithe on fisheries, are evidence of possession, and, in the case of tidal fisheries, go to show that the foreshore and fishery are within the parish and not extra-parochial, as is the case when the foreshore is deemed to be vested in the Crown (r). In the case of *Palmer v. Andrews* (y), in 1902, relating to the identification of a fishery at Cookham, on the Thames, Mr. Justice Swinfen Eady said: "Of course the tithe map shows the exact position, and although, as Sir George Jessel said (z), a tithe map is not conclusive evidence—I think that is his expression—on the question of disputed boundaries between parties, and, in fact, in the case

l) [1897] 2 Ch. 96.

(m) *Malcolmson v. O'Dea*, (1862) 10 H. L. Cas. 594.

(n) *Att.-Gen. v. Emerson*, [1891] A. C. 648. It was argued before the Court of Appeal that these entries were not admissible against the Crown on a question of title to fishery and foreshore, but the argument was rejected by Lord Esher (not reported).

(o) *Edgar v. Special Fishery Commissioners*, (1871) 23 L. T. 733.

(p) *Calcraft v. Guest*, [1898] 1 Q. B. 759.

(q) Roscoe, p. 56; *Mayor of Esher v. Warren*, (1844) 5 Q. B. 1773; *Percival v. Nanson*, (1851) 7 Exch. 1.

(r) *Smith v. Andrews*, [1891] 2 Ch. 678.

(s) *Millmay v. Newton*. See Roscoe, p. 198; Kitchen on Courts, p. 112.

t) *Doe d. Strode v. Seaton*, (1834) 2 A. & E. 171; *Doe d. Staabury v. Arkwright*, (1833) *Ibid.* 182, n.; *Buchanan v. Poppleton*, (1858) 4 C. B. N. S. 20; 27 L. J. C. P. 210.
u) *Smith v. Andrews*; *Blount v. Laward*, [1891] 2 Ch. 678; *Palmer v. Andrews*, before Swinfen Eady, J. (not reported).

(x) *Palmer v. Andrews*, per Swinfen Eady, J. (not reported).

(y) [1902], not reported.

z) *Wilberforce v. Hearfield*, (1877) 5 Ch. D. 709.

referred to, Sir George Jessel rejected it as evidence between two adjoining owners as to the particular boundary, where a ditch was; it does not preclude the tithe map being referred to for any purpose whatever. In fact, the statute (a) itself makes it satisfactory."

Of course many documents of other kinds may appear, and may be admissible on the principles of evidence; but the above indicate generally the nature of the proofs which will be accepted as documentary evidence of possession.

Modern possession is, of course, proved by oral evidence of acts of ownership, and the nature of them must depend on the circumstances of each case.

In some cases title need not be proved. Where the defendant is a mere trespasser having no right, *e.g.* the case of fishing in a non-tidal fishery by a member of the public, it would seem that possession only need be proved; but the fact of possession must be clearly shown (b). The object of a defendant, who wishes to raise a question of the right to a several fishery, is always to put the owner to proof of his title on the chance that he may be able to pick a hole in it. See *Blount v. Layard* and *Smith v. Andrews* (c). In such a case care should be taken in drawing the pleadings to avoid the necessity of proving the title, and by demand for particulars and by interrogatories to show that the defendant has no title to oppose the plaintiff's possession, or put him to proof of his title, which is, in most cases, a laborious and expensive process. It is, however, sometimes desirable to prove the title in order to establish it, and to get an injunction and a declaration of title which may probably deter other persons from trespassing on the fishery, and especially where there has been neglect by the plaintiff or his predecessors in turning off trespassers and asserting their rights strictly against persons who have been tacitly allowed to fish for a long period of time. The cases of *Blount v. Layard* and *Smith v. Andrews* are examples of this.

In considering the evidence of possession to support the title to a fishery, it is to be remembered that evidence of netting is of the highest value. Netting was the ancient and usual mode of taking the profits of fisheries, and is cogent evidence of ownership. The use of fixed engines, as weirs, kiddels, stake nets, bucks, &c., is also of high value as showing that the fishery was a fishery with the soil, especially in the case of tidal waters.

(a) Tithe Commutation Act, 6 & 7 Will. IV. c. 71.

(b) *Bristow v. Cornicran*, 1877, 3 App. Cas. 648, and cases cited, and p. 657, per Lord Hatherley; *Fitzgerald v. Firbank*, [1897] 2 Ch. 96.

(c) [1891] 2 Ch. 678.

Evidence of the ownership of eyots and islands in a river raises a strong presumption of the ownership of the soil and fishery (*d*).

Proof of the ownership of a fishing weir in a fishery, and the taking of fish by means of this or any similar engine, is evidence of the ownership of the entire fishery (*e*).

Evidence of acts of ownership in the soil, as fixing stakes, building piers or boathouses, taking gravel, cutting weeds, &c., are important as acts of ownership showing a right in the soil (*f*).

(*d*) 2 Black. Com. ii. 261 ; Hale, *De Jure Maris* ; Moore on *Foreshore*, p. 405.

(*e*) *Gabbett v. Clancy*, (1845) 8 Ir. L. R. 299 ; *Malcolmson v. O'Dea*, (1862) 10 H. L. Cas. 594 ; *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. 156 ; *Att.-Gen. v. Emerson*, [1891] A. C. 648 ; *Lord Advocate v. Lord Locat*, (1879) 5 A. C. 273 ; *Powell v. Haffernan*, (1881) 8 L. R. Ir. 132.

(*f*) *Partheriche v. Mason*, (1774) 2 Chitty, 258 ; *R. v. Alresford*, (1786) 1 T. R. 358.

CHAPTER XXV.

OF THE EFFECT OF USER BY THE PUBLIC AND OTHERS ADVERSE TO THE OWNER OF A FISHERY.

THE defence to a claim of several fishery is always to deny its existence, and to put the plaintiff to proof of his title, and the defendant usually calls as much evidence of adverse user as he can procure. In cases of tidal water this is generally evidence of fishing by members of the public claiming the common right (*a*); in non-tidal waters it is usually evidence of fishing by members of the public or by owners of riparian lands and their licensees. Most frequently it is the evidence of poachers.

With regard to a fishery in tidal waters, it seems clear that once the title to the fishery is established, viz., that the river was, or must be presumed to have been, lawfully put in defence before the time of Henry II., no fishing by the public can have any effect to displace the title or to set up a right in the public. The moment the fishery is put in defence and made several it becomes, as regards the public, a place from which they are excluded, and is at once in the same state and condition as a several fishery in non-tidal water, in which the public never had or could have a right to fish. In the case of *Neill v. Duke of Devonshire* (*b*), the duke had proved a documentary title and possession of a several fishery in the river Blackwater. The defendant, disputing the title and claiming as a member of the public to fish, proved that a kind of fishing by "cots," small engines for taking salmon, had been carried on by members of the public as far back as living memory extended, and it was contended that this evidence displaced the title to the several fishery, or was evidence that it had been abandoned. Lord Selborne's judgment on the point is as follows: "Nothing now remains for me but to deal with the last question, on which your Lordships heard the respondent's counsel, viz., whether Mr. Justice Lawson's manner of leaving the evidence as to cot-fishing to the jury, was right, and what was the proper effect of that evidence. Shortly stated, the applicant's evidence as to cot-fishing was, that it had

(*a*) See *Wise v. Leakey*, 1875, 9 Ir. R. C. L. 384, per Morris, J.

(*b*) (1882) 8 App. Cas. at pp. 152 and 170.

been carried on, upon all parts of the river, from a point above the lower terminus of the bishop's fishery to one somewhat higher than the Broad of Youghal, during the present century, with the knowledge of the duke or his agents, and without interruption by them, as far back as living memory extends; that many persons have practised it, forty or fifty cots at a time being sometimes seen on the same part of the river; and that the quantities of salmon taken in that manner were very considerable and of very substantial value. This evidence is relied upon to show, not (as in the case lately before your Lordships, of *Goodman v. Mayor and Burgesses of Saltash* (c)) that this practice of cot-fishing is reconcileable with the existence of a several fishery in that part of the river, but for the opposite purpose, of establishing a general public right of fishing and proving that, notwithstanding all the evidence of title and possession adduced by the duke, the river Blackwater was not 'put in defence' before Magna Charta. The mode of fishing by drift nets, practised by the appellants, is of recent introduction, and is wholly different from cot-fishing, and beyond comparison more destructive to the fish and more injurious to the owner of the several fishery, if a several fishery exists. Mr. Justice Lawson was, in my opinion, quite right in telling the jury, as he did, that the duke's case, taken by itself, was one of such strength as almost (if not absolutely) to entitle his Grace to have a verdict entered for him, but for the appellants' evidence as to cot-fishing; and also that, if the jury once came to the conclusion that the duke, under the grants to his ancestors, had a several fishery in the river, the question of cot-fishing would become immaterial; 'because no exercise of cot-fishing in the river, if it was really the several fishery of the duke, could take away the several fishery from him, or confer any rights on the public.' The public could not, in law, prescribe for a *profit à prendre in alieno solo*; they could acquire no right adversely to the owner of the several fishery under any Statute of Limitation; and 'abandonment,' which was suggested in the argument of the appellants' counsel, is a term which has no legal meaning as to an incorporeal hereditament, such as a several fishery, which can only pass by deed." "Usage (d), continued during living memory, when there is nothing to the contrary, and when the question is one of prescription, may (no doubt) justify the presumption of a similar usage, as of right from time immemorial. But when it is relied upon not to establish a prescriptive right, but to displace a prescriptive right, supported by written titles and evidence of long possession for a period earlier than, and coming down to, the time of living memory, it appears to me that such a presumption would

(c) (1882) 7 A. C. 633.

(d) (1882, 8 A. C. p. 156.

be neither reasonable in fact nor necessary in law. It would be extremely dangerous if titles, otherwise impregnable and supported by long enjoyment, could be overturned by evidence of that kind. 'It is the wise policy of the law,' said Mr. Justice Heath, in the celebrated gleaming case (*Steel v. Houghton*) (*c*), 'not to construe acts of charity, though continued and repeated for never so many years, in such a manner as to make them the foundation of legal obligation.' "

Lord O'Hagan's judgment is as follows (*f*): "There was abundant evidence that upon a great part of the river, including a portion of the bishop's fishery, and extending through the spaces in which the trespass is complained of, the practice of cot-fishing has been for a multitude of years pursued largely, continuously, and without interruption, although on the lower part of the stream towards Youghal the proof did not establish the existence of such a practice so allowed.

"That proof was submitted to the jury as bearing on the questions whether a several fishery was vested in the respondent and his predecessors, and whether the river had been appropriated to the exclusion of the public right? But it was insisted that the jury should have been further asked to consider whether the respondent and his predecessors had abandoned the right to a several fishery. I think that the appellants made no case of abandonment which should have been submitted. Without discussing the view of one of the learned Judges of the Exchequer, that 'in point of law it is not possible for an abandonment to take place of a fishery in the manner suggested,' it may be enough to say that no sufficient authority to the contrary has been adduced, and that a mere interruption of the possession under an established title in such a property cannot be held to have destroyed it. An interruption may have been permitted through the absence of the proprietor, or through his ignorance, partial or complete, of the acts relied on; or through his neglect or indifference to them as not vitally affecting, in his own case, his interest or position; or as requiring from him, for the purpose of resistance, effort or expense unjustified by the necessity of the case; or as allowed from kindly or benevolent motives to humble people for a great length of time. And it would not seem just, as it would not be legal, on the ground of such an interruption, so tolerated, to pronounce the forfeiture of his vested estate."

It would appear, therefore, that it may be said, "once a several fishery always a several fishery." Once the public right has been excluded, the public cannot in law regain the right to fish. The

(*c*) (1788) 1 H. Bl. 64.

(*f*) 8 A. C. p. 170.

owner cannot abandon the fishery so as to revest the right of fishery in the public, for the public cannot prescribe for a *profit à prendre*. Exercise of fishery by the public in a river which has been put in defence must be taken in law to be fishing by tacit license from the owner of the fishery, and can have no effect to destroy or displace his title. How far evidence of extensive user by the public, where there is little or no proof of possession by the claimant to the fishery other than a mere paper title (g), might affect the question of the presumption of a lawful origin for the several fishery, is another matter. It is conceivable that in such a case it might be held that the claimant was not in possession, or that the fishery had not passed to him, or that there was a flaw in his title which disqualified him from succeeding" (h). In *The Duke of Devonshire's* case the documentary title was completely proved, and also extensive user by leases and fishing with nets down to the time of the action. Owners of fisheries, therefore, will be well advised to keep up evidence of their ownership and possession by preventing all netting by the public, even if they are charitably desirous of allowing the public the sport of angling.

In non-tidal waters fishing by members of the public as such must be mere trespass, usually allowed by tacit license of the owners of the waters, who sympathise with the angler, and are loth to interfere with the enjoyment of his sport. Such fishing cannot by any length of user become the foundation of a right as against the owner of the fishery, and therefore it would appear that he need not be over careful to prevent it or be churlish about his rights. In *Blount v. Layard* (i), Bowen, L.J., clearly states the law with respect to the upper Thames, and the law is the same as to all non-tidal rivers. He says: "There is another most important matter to be recollected as regards such streams as the Thames, viz., that, although the public have been in the habit as long as we can recollect, and as long as our fathers can recollect, of fishing in the Thames, the public have no right to fish there—I mean they have no right as members of the public to fish there. That is certain law. Of course they may fish by the license of the lord or the owner of a particular part of the bed of the river, or they may fish by the indulgence or owing to the carelessness or good-nature of the person who is entitled to the soil, but right to fish themselves as the public they have none; and whenever the case is tried the jury ought to be told this by the Judge in the most emphatic way, so as to prevent them from doing injustice under the idea that they are

(g) *Neill v. Duke of Devonshire*, (1882) 8 App. Cas. at p. 343, per Lord Selborne.

(h) See *Blount v. Layard*, [1891] 2 Ch. 689.

(i) [1891] 2 Ch. at pp. 689—691. See also *Smith v. Andrews*, *Ibid.*, p. 678.

establishing a public right. There is no such right in law, and it has not been contended that there is."

Where, however, there has been extensive fishing by members of the public, and the onus is on the claimant to the several fishery to make out his title, the question is one for the jury, and not a mere question of law, viz., as to whether in the face of such evidence it can be found that the claimant is the true owner of the fishery (*k*). This involves a danger to the fishery owner which he should be careful to avoid. In *Blount v. Layard* there was no proof whatever that the owners of the fishery or any of their tenants had ever interfered with the public fishing. They had allowed it to go on in sight of their windows, and it was held that these facts must go to the jury for them to consider whether, in spite of his paper title, he was in fact the true owner of the fishery. In *Smith v. Andrews*, on the other hand, there was clear evidence of occasional interruption of the fishing and assertion of the owner's right to do so (*l*). Bowen, L.J., in *Blount v. Layard*, in deciding that the evidence must go to the jury, says: "I think that if the case is retried, the jury ought to be most carefully warned (as they were) not to do injustice under the idea that they are vindicating a public right. I think they ought to be solemnly told (as they no doubt will be) that nothing worse can happen in a free country than to force people to be churlish about their rights for fear that their indulgence may be abused, and to drive them to prevent the enjoyment of things which, although they are matters of private property, naturally give pleasure to many others besides the owners, under the fear that their good-nature may be misunderstood. I can conceive nothing more unfortunate than that the owners of the right of fishing on large streams should be driven to prevent the successors and followers of 'Isaac Walton' from dropping their lines for trout, for fear that their doing so should crystallise into a right. It would be a most unfortunate thing for the public if that should ever happen, and I think that, however continuous, however lengthy, the indulgence may have been, a jury ought to be warned against extracting out of it an inference unfavourable to the person who has granted the indulgence. But, when the Judge has told the jury that, and warned them accordingly, it seems to me it is still for the jury to decide whether this indulgence, this long non-interruption of fishing opposite the plaintiff's windows, throws such doubt upon his title as might relieve them from finding a verdict in his favour."

When the public have been allowed to fish in private waters, even

(*k*) *Blount v. Layard*, *ubi supra*.

(*l*) See *Smith v. Andrews*, at pp. 698 and 707.

from time immemorial, the permission is revocable at any time at the will of the proprietor (*m*). The public have no right to fish in a non-tidal lake, although user by angling has been permitted for many years (*n*).

It is evident, therefore, that it is highly desirable for owners of fisheries, who allow any kind of fishing by the public, to occasionally assert their right to prevent them from fishing, or to compel them to take licenses or ask permission to fish, and generally to exercise acts of ownership of such a character as to show that they are in possession of the right to which they have a documentary or (as it is sometimes called) a paper title. They may be driven, in order to maintain their rights, to fight impecunious defendants subsidised by angling clubs or public subscriptions, and be put to great expense in proving their title, with the risk that, in the absence of conclusive evidence of their being in possession under the title, the jury, who may sympathise with the anglers, may find a verdict against the title.

Besides fishing by members of the public, who can have no right, there is very often the evidence of fishing by particular persons or classes of persons under a claim of right adverse to the owner of the several fishery. The riparian owner may show exercise of fishing from his banks, claiming the right to fish as owner of the soil and fishery to the mid-stream. If he claims in this right, he must claim the exclusive right to the mid-stream (*o*), and, to support such a claim, his evidence ought to show that he has fished exclusive of the right of the owner of the fishery, so as to raise the presumption that on the grant of the riparian land by the original owner of both the land and the river (the lord of the manor), such owner intended to grant and did grant to him the land to the mid-stream and the fishery over it.

When a riparian owner sets up a claim to fish from his land as against the owner of the manorial fishery, the onus of proof is on the lord of the manor or owner of the manorial fishery. In *Lamb v. Newbiggin* (*p*) the lord of the manor of Crawcrok, in Durham, claimed the fishery in the Tyne throughout the extent of the manor. The defendant was the owner of riparian land called "Stammers." The lord claimed under a conveyance of 1693 of the manor and a free fishery in the Tyne, but the defendant produced a deed of 1672,

(*m*) *Marshall v. Ulleswater*, (1863) 3 B. & S. 732; *Holford v. Bailey*, (1846) 13 Q. B. 426; 8 Q. B. 1016.

(*n*) *Perry v. Thornton*, (1888) 23 L. R. Ir. 402.

(*o*) *Waterford Conservators v. Connolly*, (1889) 24 Ir. L. T. R. Ex. 6; *Beannota v. Kinsella*, (1859) Ir. R. 11 C. L. 249.

(*p*) (1844) 1 C. & K. 549.

being a conveyance of Stanners, "together with a free fishery in the Tyne to the said premises belonging." The report does not state whether there was any evidence of user by either party: apparently there was not. It was argued for the plaintiff that when a private river runs through a manor, the right of fishery *prima facie* belongs exclusively to the lord; but Pollock, C.J., was of opinion "that the presumption of law is the other way, and that whoever owns the land which abuts on the river must be taken to own the water in front thereof and the right to fish there, so that if the lord claims a several fishery he must make out that claim by evidence" (q).

When in a conflict between the owner of the original manorial fishery in a river and the riparian owner, the latter shows a conveyance of the riparian land coming from the predecessor in title of the owner of the fishery and the land without any reservation of the right of fishery, and shows also user of the right by himself and his predecessors in title since the conveyance, the presumption of his ownership of the soil and fishery to mid-stream will be strongly raised as against the owner of the fishery, and it would be extremely difficult to rebut such a presumption, especially if there was no evidence of fishing by the fishery owner at the spot in question (r). Although, however, the force of this presumption is very great, it is only a presumption always capable of being rebutted. The rule of construction, as laid down by Cotton, L.J., in *Micklethwait v. The Newlay Bridge Co.* (s), is as follows: "In my opinion the rule of construction is now well settled, that where there is a conveyance of land, even although it is described by reference to a plan, and by colour, and by quantity, if it is said to be bounded on one side either by a river or by a public thoroughfare, then on the true construction of the instrument half the bed of the river or half of the road passes, unless there is enough in the expressions of the instrument to show that that is not the intention of the parties. It is a presumption that not only the land described by metes and bounds, but also half the soil of the road or of the bed of the river by which it is bounded, is intended to pass, but that presumption may be rebutted. In my opinion, you may look at the surrounding circumstances, but only to see whether there were facts existing at the time of the conveyance, and known to both parties, which showed that it was the intention of the vendor to do something which made

(q) It would appear that the true facts were that Stanners was not within the manor of Crawlerok at all. It was a distinct tenement having a several fishery belonging to it in 1603: Durham Cursitors Records, 4 Bishop Matthew, ro. 63. Even if it were within the bounds of the manor it had been severed from it with its fishery before that date.

(r) See *Little v. Wingfield*, (1858) 8 Ir. C. L. 279; 11 Ir. C. L. 63.

(s) (1886) 33 Ch. D. at p. 145.

it necessary for him to retain the soil in the half of the road or the half of the bed of the river, which would otherwise pass to the purchaser of the piece of land abutting on the road or river. There may be facts, whether appearing on the face of the conveyance or not, from which it is justly inferred that it was not the intention of the parties that the general presumption should apply, but in my opinion it is not sufficient that circumstances which afterwards occur show it to be very injurious to the grantor that the conveyance should include half of the bed of the river or half the soil of the road."

In the case of *Duke of Devonshire v. Pattinson* (t) in 1887, the duke was owner of the manorial fishery; the defendant was licensee of the corporation of Carlisle, who were the owners of two meadows conveyed to their predecessors in title by the duke's ancestor in 1767 and 1846 without any reservation of fishing rights; but there was no evidence of user by the corporation or their predecessors in title, and there was evidence that, at the time of the conveyances, the duke was letting the fishery or had it in hand. It was argued for the defendant that the rule of conveyancing was that when land is described by a conveyance as bounded by a river the land conveyed is presumed to extend *usque ad medium filum*, and that the presumption cannot be rebutted by mere subsequent user or other matters entirely extraneous to the deed. This contention the Court of Appeal declined to accept. Fry, L.J., in delivering the judgment of the Court, said:

"They have further contended that this presumption can be repelled only by words in the deed itself. In our opinion this latter contention cannot be maintained, for we hold that the presumption may equally be rebutted by the circumstances under which the deed was executed. It is not necessary to refer in detail to the cases of *Beckett v. Corporation of Leeds* (u), or *Marquis of Salisbury v. Great Northern Ry. Co.* (x), and the very recent case of *Micklethwait v. Newlay Bridge Co.* (y). The conclusion that you may regard the circumstances under which a deed is executed as rebutting the presumption is only an illustration of a wider principle. 'In deeds as well as in wills,' said Lord Wensleydale in *Waterpark v. Fennell* (z), 'the state of the subject at the time of execution may be inquired into.' So again there is a presumption that a demise of land described by superficial metes and bounds carries with it the land to the centre of the earth; but this presumption has been rebutted by considering the state of circumstances at the date of

(t) (1887) 20 Q. B. D. 265.

(u) (1871) L. R. 7 Ch. 421.

(x) (1858) 5 C. B. N. S. 174.

(y) (1886) 33 Ch. D. 133.

(z) (1859) 7 H. L. C. 650.

the grant, and finding that the lessor has previously demised a cellar to a third person, who was in occupation under that lease at the date of the lease of the surface: *Doe d. Freeland v. Burt (a)*. There is, in our opinion, no doubt that in the grant of a set of chambers in our Inns of Court, a flat in a house constructed in flats, or of a seam of coal in the earth, the presumption that the grant extended infinitely upwards and downwards would be repelled by the nature of the subject-matter of the grant, and without any express words in the conveyance."

"What, then, were the circumstances surrounding the grant made by the duke of the Castle Saucery in 1846? At that date the fishery throughout the reach of the Eden now in question was in the tenancy of one George Relph, who was a partner in or trustee for a company; it had been in that tenancy for some thirteen years, and the company and their servants had openly, with boats and nets, fished the river. Looking at the usage under this deed (as we are bound to do in the construction of a deed now several years old) we find that from its date down to immediately before this action, neither the grantees under the deed of 1846, nor the corporation as their assigns, ever fished the stream by virtue of any right of soil or otherwise. These circumstances seem to us strong to show that the duke did not by the deed in question intend to grant a right in the river inconsistent with his previous demise to Relph, and consequently are sufficient to rebut the presumption which would have given half the bed of the river to the grantees of the duke."

"With regard to the deed by which the duke granted the Far Saucery to the corporation in 1846, and which bears the same date as the conveyance of Castle Saucery to Messrs. Dixon, all the observations just made with regard to that deed apply."

"With regard to the conveyance by the Duke of Portland to the corporation of the Hole Meadow in 1767, similar observations apply so far as the facts of the case are or can be in evidence. We do not know whether the fishery was at that date in the hands of the duke or of a tenant; but we know that for many years previous it had been let as a fishery, and we feel bound to presume that the modern user, which has been proved with regard to the fishery, existed in 1767, that the fishery was then, as now, known and treated as a tenement distinct from the closes adjoining the river; and the fact that the corporation had never, for more than a century after the grant of 1767, set up any title to fish under this deed or exercised any such right, is a strong confirmation of our conclusion. 'All ancient documents,' as

was rightly said by Lord Wensleydale in *Duke of Beaufort v. Mayor of Swansea* (b), 'where a question arises as to what passed by a particular grant, can be explained by modern usage.' "

This principle of construction has been followed in later cases (c). It appears, therefore, that the question as to whether the soil to the mid-stream passes by the conveyance of riparian land made by the person who is owner of the riparian land and also of the fishery, is a question of what was the true *intention* of the parties to the deed, and that the existence or non-existence of this *intention* may be ascertained by considering the circumstances under which the deed was executed, if it be a modern deed, and also the subsequent user if the deed be an old one. If from the circumstances no intention to pass the fishery and soil to the mid-stream can be inferred, the presumption will be rebutted.

In some cases, however, it may appear that the owner of the riparian land has fished concurrently with the owner of the fishery to the mid-stream opposite his land. Then the riparian owner can claim, not the exclusive fishery in the half river, but a fishery in common with the owner of the fishery, and for this he must either show a grant of the land with the right to fish, or show evidence to raise the presumption of a grant of common of fishery from the predecessors of the owner of the fishery. Such grants are not uncommon. In 14 Edward I. (d), Nicholas Fermeland claims common of fishery in Rollesham, against William le Grant and others, from Rollesham Mill to Suthcote Mill. The parties came to an agreement whereby William le Grant grants to Nicholas and his heirs "*quod decetero habeant communiam piscariæ in aquam prædictam cum omnimodis ingeniis ad capiendos pisces exceptos gurgites imperpetuum*"; and Nicholas releases to William all his claim to fish in the mill pools of Rollesham and Suthcote. In some of the earlier cases in the records we find the riparian owner claiming in this way not the exclusive fishery opposite his land, but a common of fishery with the fishery owner. See the case in Bracton's Note Book, No. 835, *ante*, p. 37; the case of *Oliver de Isenny*, *ante*, p. 38; the case of *Nicholas de Emberlin*, *ante*, p. 38; the case of *The Prior of Tickford*, *ante*, p. 47.

From these cases it would seem that in early times, when fisheries were valuable, it was not the practice for the lord of the manor and owner of the fishery to grant out the riparian land with the exclusive

(b) (1849) 3 Exch. 413.

(c) *Pryor v. Petre*, [1894] 2 Ch. 11. See also *Beckett v. Leeds*, (1871) L. R. 7 Ch. 421; *Marquis of Salisbury v. G. N. Railway*, (1858) 5 C. B. N. S. 174; *Leigh v. Jack*, (1879) 5 Exch. D. 264; *Mappin v. Liberty*, (1903) 1 Ch. 118.

(d) Assize Roll, No. 63, Bucks, m. 16 d.

right of fishing to the mid-stream, thus excluding his own right, and, as it were, cutting a hole in and breaking up the continuity of his fishery; but to grant a right of common of fishery merely to the riparian owner, so that he and his grantee might fish concurrently. This would be a course of action which we might naturally expect. It is hardly to be conceived that the lord would break up his fishery by granting any exclusive right to his tenant, and so make it practically impossible to draw his nets down the river without trespassing on the rights of his free tenant. This was undoubtedly the usual practice in early times, so far as we can gather from ancient records, and it seems more than probable that ancient riparian rights to fish were all rights of common of fishery, and not exclusive rights, but have come to be looked upon as exclusive rights solely by the form of and constant reiteration of the riparian presumption to the mid-stream, and from the fact that that presumption has been stated in the books as applying to the owners of the "land" abutting on the river, when "land," in the days when the dictum was laid down, must have invariably meant "manor." It has also been held that the presumption applies to a copyhold as well as to a freehold (*e*). It is difficult to suppose that the lord of a manor who was owner of the several fishery would, in granting land to his bond tenants, also cut up his valuable fishery, and deprive himself of part of it in favour of his tenant. It is impossible to suppose that such could have been his *intention* at the time of the grant. As copyholds must have been granted before the Statute of Quia Emptores, 18 Edward I., and in most manors the greater part of the lands were held by copy at that date, we should hardly expect to find manorial fisheries extending the whole length of the manor, as we do in the instances taken from the Hundred Rolls in 7 Edward I. See *ante*, Chap. VII. The present existence of very many manorial fisheries extending over stretches of river, the riparian lands of which are copyhold, is cogent evidence that the lords of manors in granting out copyholds never *intended* to grant them to the mid-stream, and as the grant of the copyhold tenement must have been made anterior to 18 Edward I., it is submitted that when there is no evidence of fishing by the copyhold tenant there can be no presumption that the lord intended to grant to him the ownership of the soil and fishery of the river to the mid-stream.

Moreover, whenever we find a claim by a copyhold tenant to a right to fish, it is invariably a claim by the custom of the manor, and is a claim to common of fishery, limited either to the use of the fish for his sustenance in his tenement, or limited to the use of

some particular kind of net or particular kind of fish only (*f*). It would seem therefore to be doubtful whether the presumption of riparian ownership to the mid-stream, where there is a fishery, can apply to a copyhold tenement. No instance of such a case has been met with.

Claims have been made by inhabitants of a particular town, manor, and township to fish in fisheries, but have (with one exception) been defeated on the ground that fishing is a *profit à prendre in alieno solo*, and cannot be claimed by an uncertain and fluctuating body of persons who cannot be incorporated so as to receive a grant. A custom for all the inhabitants of Bala to fish was held bad (*g*). The dredgemen on the Colne were held not to be a corporation to take a *profit à prendre* (*h*). In *Allgood v. Gibson* (*i*) a custom for the commoners, copyholders, and ancient freeholders of a manor and their tenants and the dwellers in the parish and manor to fish in the waste waters of a manor was held bad and unreasonable.

In *Bland v. Lipscombe* (*k*) a custom for all the inhabitants of a parish to angle and catch fish was held bad (*l*). The reasonable ground of objection to such suggested customs is that so large a right would tend to the destruction of the subject-matter (*m*).

In the case of *Goodman v. The Mayor of Saltash* (*n*) the free inhabitants of ancient tenements in the borough of Saltash claimed a right to take oysters in a fishery belonging to the corporation at particular seasons without stint and for sale. They proved immemorial exercise of the right, claiming as of right. The original charter granting the fishery was not in existence, but was evidently of great antiquity, probably anterior to the reign of King John. The House of Lords (Lord Blackburn dissenting), seeking for a legal origin to account for the usage, decided (per Lord Selborne) that the evidence established a title in the corporation to a several fishery; not, however, an absolute and unqualified title for their sole benefit, but one qualified by a trust or condition in favour of the free inhabitants of ancient tenements within the borough in accordance with the usage.

(*f*) Woolrych on Waters, pp. 127, 166, 167, Exch. Dep. E., 13 Will. III. 27; tenants have liberty to fish for eels, culls and cray fish, with "budgett" nets only. *Tilbury v. Silva*, (1890) 45 Ch. Div. 99; *Lloyd v. Jones*, (1848) 6 C. B. 81; *Bland v. Lipscombe*, (1854) 4 E. & B. 713.

(*g*) *Lloyd v. Jones*, (1848) 6 C. B. 81; 5 D. & L. 789; 17 L. J. C. P. 206.

(*h*) *Mills v. Mayor of Colchester*, (1864) 17 C. B. N. S. 635.

(*i*) (1876) 34 L. T. N. S. 883.

(*k*) (1854) 4 E. & B. 713.

(*l*) And see *Orderway v. Orme*, (1612) 1 Bulst. 183; *English v. Burnell*, (1765) 2 Wils. 258; *Tinnery v. Fisher*, (1604) 2 Bulst. 87.

(*m*) *Race v. Ward*, (1855) 4 E. & B. 702; *Clayton v. Corby*, (1843) 5 Q. B. 415.

(*n*) (1882) 5 C. P. D. 431; 7 Q. B. D. 106; 7 App. Cas. 633.

CHAPTER XXVI.

OF THE POWERS OF AN OWNER OF A FISHERY TO LEASE AND LICENSE, &c.

WHEN letting a fishery the owner of it should be very careful as to the manner and form of the instrument by which it is let. He should be careful that the instrument describes the fishery accurately, in order to avoid discussion and dispute as to the nature and extent of his rights either during the term granted or subsequently, when the instrument may have to be produced in evidence to establish his title and possession. Leases granted by the owners of fisheries are really their most important title-deeds, as showing the nature and extent of the possession of the fishery, and form the best evidence for the owner (*a*). Having regard to the varying kinds of fisheries and the particular conditions under which they are let, it would be only misleading to lay down or suggest any general form of a lease of a fishery. Every such instrument must be drawn in accordance with the facts of each particular case and the requirements of the lessor and lessee respectively. There are, however, some points to be observed in settling the lease of a fishery to which it may be useful to call attention.

In the first place, it is always advisable to let a fishery by a deed under seal. This prevents any question arising as to whether the fishery is a fishery with the soil or an incorporeal fishery; an incorporeal hereditament can only be conveyed by a deed (*b*). It is true that a fishery may be let by verbal agreement; and even where no rent has been agreed upon the landlord is entitled to sue the tenant for a reasonable rent for use and occupation (*c*). This course, however, is very undesirable, tending to give rise to dispute and difficulty, and the owner of the fishery loses the opportunity of putting on record the nature and extent of his possession. It is also advisable to annex a carefully made plan to the deed.

A grant by deed for a term of years of the exclusive right of fishery, with a proviso that "the right of fishery hereby granted

(*a*) *Bristow v. Cormican*, (1877) 3 A. C. at p. 668.

(*b*) *Duke of Somerset v. Fagwell*, (1826) 5 B. & C. 875; *Bird v. Higginson*, (1835) 2 A. & E. 696.

(*c*) *Holford v. Pritchard*, 1849, 3 Exch. 793.

shall only extend to fair rod-and-line angling, and to netting for the sole purpose of procuring fish baits," is not a mere license to fish, but a right to fish and carry away the fish caught, and is a *profit à prendre* and an incorporeal hereditament, and gives a right of action against any person doing any act prejudicial to the enjoyment of such right (*d*).

In leasing lands adjoining fisheries care should be taken to avoid any danger of incidentally letting the fishing rights with the land. In an ordinary lease of lands with general words of waters, streams, &c., the right of fishery (like the right of shooting and fowling) is necessarily implied as part of the general right to the soil and water, and its profits, unless the lessor specially reserves it. If there is no special reservation of the right of fishery, the tenant and not the landlord will be entitled to the fishery, and the landlord or his lessees, or licensees of the fishery, cannot go upon the land for the purpose of fishing (*e*). Although, strictly speaking, a right of fishing cannot be reserved by a lease, the same practical result is obtained by the reservation, because the reservation is construed as a regrant by the tenant to the landlord (*f*). Therefore, in granting a lease of lands adjoining a fishery, it is necessary to insert carefully drawn reservations of the right of the landlord to the fishery, and to secure power to him, his lessees, licensees, water bailiffs, and servants to go upon the banks for the purpose of fishing and preserving the fishery.

It is also necessary to be very careful in drawing the covenants binding the lessee. In a recent case (*g*) a covenant by the lessee in a lease of rod fishing not to "underlet, assign, transfer, or set over, or otherwise by any act or deed procure *the said premises* to be assigned, transferred, or set over unto any person or persons whomsoever without the consent in writing of the lessor," was held not to prevent the lessee from giving a license for two rods to another person during the term of the lease, Joyce, J., holding that by reason of the omission from the covenant of the words "any part of the premises," an assignment of a part of the premises was not forbidden.

The owner of the fishery may license persons to fish in his fishery. The license may be either by parol or by deed under seal.

d *Fitzgerald v. Firbank*, [1897] 2 Ch. 96; 76 L. T. 584, C. A.

e Paterson's Fishery Laws, p. 67; *Davies v. Jones*, [1902] 18 T. L. R. 367; Oke's Game Laws, p. 118.

f *Ewart v. Graham*, (1859) 7 H. L. Cas. 331; *Seymour v. Courtney*, (1771) 5 Bur. 2815; Paterson's Fishery Laws, p. 68; *Wickham v. Hawker*, 1840 7 M. & W. 63; *Hamilton v. Masgrove*, (1870) Ir. R. 6 C. L. 129; *Corcor v. Payne*, 1879, Ir. R. 4 C. L. 389; 18 W. R. 436.

g *Grove v. Popul*, [1902] 2 Ch. 727.

If the license is by parol, it will *prima facie* be presumed only to give the licensee the right to fish and not the right to carry away the fish caught, because the latter right, being an interest in land (*h*), must, by the Statute of Frauds, be made by deed. A license by parol and not under seal passes no interest, nor alters or transfers property in anything; it only makes an action lawful which without it had been unlawful (*i*). Such a license is revocable at any time. A license under seal (provided it be a mere license) is as revocable as a license by parol. A license by parol, coupled with a parol grant, or pretended grant, of something which is incapable of being granted otherwise than by deed, is a mere license: it is not an incident to a valid grant, and it is therefore revocable (*k*). Thus a license to fish, not including the right to take away the fish caught, whether given by deed or by parol, is revocable; it merely renders the act of fishing lawful, which without the license would have been unlawful.

If the license be a license not only to fish but also to carry away the fish when killed, this is a grant of the fish with a license annexed to come on the fishery, and supposing the grant of the fish be good, *i.e.*, to be by deed, then the license to fish will be irrevocable by the party who had given it; he would be estopped from defeating his own grant, or act in the nature of a grant. If the license to fish and take away fish be by parol, it can be revoked at any moment, even though a valuable consideration has been given for it (*l*), because the right to take away fish can only be granted by deed (*m*); but the licensee may have a remedy in damages for a breach of contract (*n*). A grant by deed of the right of fishing is not a license to fish, but a right to fish and carry away the fish caught, and the grantees have a right of action against any one who wrongfully interferes with their right (*o*). If the document which purports to give a right of fishing is so worded as to lead to the presumption that a grant was intended or promised, the Courts will exercise their equitable jurisdiction by restraining the licensor from interfering with the licensee until he has executed a valid legal grant (*p*).

Before a parol license is revoked, reasonable notice should be given to the licensee (*q*).

h) *Webber v. Lee*, 1882 9 Q. B. D. 315.

i) Per Vaughan, L.C.J., in *Thomas v. Sorrell*, (1673) Vaughan, 351.

k) Per Alderson, B., in *Wood v. Leadbitter*, (1845) 13 M. & W. p. 845.

l) *Wood v. Leadbitter*, 1845 13 M. & W. 834.

m) *Webber v. Lee*, (1882) 9 Q. B. D. 315.

n) *Kerrison v. Smith*, [1897] 2 Q. B. 445.

o) *Fitzgerald v. Fitcham*, [1897] 2 Ch. 96.

p) *Frouley v. Earl of Lovelace*, (1859) Johnson, 333.

q) *Mellor v. Watkins*, (1874) L. R. 9 Q. P. 400.

CHAPTER XXVII.

OF PROCEEDINGS FOR THE PROTECTION OF FISHERIES.

IN the case of a trespass to a fishery in tidal water it is, as a rule, inadvisable to resort to a prosecution before magistrates under the Larceny Act, 1861. The defendant will always set up a claim of right, as a subject of the realm, to fish in tidal waters, and then the plaintiff will have to satisfy them that the fishery is an ancient several fishery and that he is the owner in possession of it; in short, he will have to prove his title, unless in any case the title has been tried and established in a Court of law, of which decision the magistrates must take cognisance, or unless he can show sufficient possession to raise the presumption that his title is a legal one. If he can show possession for sixty years, as by leases, receipt of rent, paying taxes, &c., he will sufficiently establish his title and possession. Such possession would be sufficient even against the Crown, and therefore is sufficient in the case of a person claiming under the title of the Crown. Proof of a possession for a shorter period will suffice if the magistrates can be induced to presume a lawful origin for the possession of the fishery, as against the public, from the user shown (*a*). Whether it is advisable to prosecute instead of bringing an action at law will depend upon the nature of each case and the state of the evidence and title. In most cases of trespass to tidal fisheries there is always a great danger of the magistrates declining to convict. Such a result encourages the fishermen and anglers, and results in a great increase of the trespasses, and the fishery owner is at length driven to bring an action to establish his right. Even if a conviction is secured, the punishment is usually so slight that the effect of it does not deter other fishermen from trespassing. If action at law is taken, the fishery owner, although put to expense in proving his title, if the action is fought out, establishes his rights once for all, and can resort to prosecution afterwards and effectually prevent further trespass. In many cases of actions the defendants do not appear, and, if they appear, do not defend. Judgment is got by default, and the costs incurred, being of much larger amount than the fines imposed by the magistrates, discourage further

(*a*) *Reg. v. Downing*, (1870) 11 C. C. C. 580.

trespassers. In a case in tidal water the common *primâ facie* right of the public to fish may always be set up as a *bonâ fide* claim of right (*b*) to oust the jurisdiction of the magistrates. It was formerly thought that the public right of fishery extended to waters which, though not tidal, were navigable, but that contention has been finally overruled, and it is now established that the public right extends only to waters affected by the tidal influence, where such water is not within the bounds of a several fishery. It was decided in *Pearce v. Scotcher* (*c*) that "when a river is navigable *and tidal* the public have a right to fish therein, as well as to navigate it, but that when it is navigable but *not tidal* no such right exists." Upon this there arises the question as to the right when the spot or river is *tidal* but *not navigable*. It is difficult to conceive the existence of a spot within the tidal influence, and where fish could exist, which is not in some sense *de facto* navigable by some kinds of boat, as punts, coracles, &c. The mere fact of the presence of the tidal influence does not of itself make a place navigable. If it is a petty stream, navigable only at certain states of the tide, and then only for a short time and by very small boats, it is difficult to suppose that it has ever been a public navigable channel. A channel may cease to be navigable from natural causes, or by Act of Parliament, or on *ad quod dampnum* (*d*), but it would seem that where a river had silted up, and was dredged out and made navigable, the right of the public survived (*e*). It must therefore be a question of evidence in every case whether a particular part of any tidal water is or is not navigable.

If the public right depends solely on the *primâ facie* right of the Crown to the sea and its foreshores, as a profit of such lands, it would seem that the right to fish will follow the Crown right to possession of the soil, irrespective of the right to navigate, as there is no pretence that the Crown right to foreshore is limited to navigable rivers only. But all the older authorities claim the public right to fish as being limited to *navigable* rivers alone, as though this right were a privilege to the public that where they

(*b*) *Reg. v. Stimpson*, (1863) 4 B. & S. 307.

(*c*) *Murphy v. Ryan*, (1868) Ir. R. 2 C. L. 143; *Hargreaves v. Daddams*, (1875) L. R. 10 Q. B. 582; 44 L. J. M. C. 178; 32 L. T. 600; *Musset v. Burch*, (1876) 35 L. T. N. S. 486; *Hudson v. McRae*, (1863) 4 B. & S. 585; 33 L. J. M. C. 65; *Pearce v. Scotcher*, (1882) 9 Q. B. D. 162; *Smith v. Andrews*, [1891] 2 Ch. 678; *Reece v. Muller*, (1882) 8 Q. B. D. 626; 51 L. J. M. C. 64.

(*d*) *Roe v. Montague*, (1825) 4 B. & C. 598; 28 R. R. 420; *Helester v. Rushleigh*, (1889) 5 T. L. R. 739; 61 L. T. 477; *Mayor of Lynn v. Turner*, (1774) 1 Cowp. 86; *Miles v. Rose*, (1814) 5 Taunt. 700 a; 15 R. R. 623. See *Bell v. Corporation of Quebec*, (1879) 41 L. T. N. S. 451 (P. C.); 49 L. J. P. C. 1; *Angel on Watercourses*, ch. 13. *Mayor of Colchester v. Brooke*, (1845) 7 Q. B. 339; *Fought v. Welch*, (1819) 2 B. & Ald. 662; 21 R. R. 446. See Coulson & Forbes on Waters, 2nd Edit. 65 *et seq.*

(*e*) *Reg. v. Betts*, (1850) 16 Q. B. 1022; 19 L. J. Q. B. 531.

could navigate lawfully, there they could fish. Recent decisions have limited it strictly to that part of the tidal water which is navigable *and* tidal, and there appears to be no authority to suggest that the public can have the right to fish in tidal water which is not strictly navigable. What navigable means is a question of fact in every case. In inland waters not tidal no right to fish can be set up by members of the public, or by inhabitants, or any undefined class or body of persons who can have no right to a *profit à prendre in alieno solo*. If a right is set up by the defendant it must be set *bona fide* and in the *bona fide* belief that it is a right which he has, and it must be a right capable of existence in law (*f*). The *bona fides* of the claim is for the justices to determine (*g*).

If, however, upon the hearing of the evidence the justices are satisfied that the assertion of a claim of right is not made *bona fide*, and the facts warrant them in that belief, their jurisdiction is not ousted (*h*). To oust the jurisdiction by a claim of right such claim must have some colour to support it (*i*). It is advisable, therefore, in the case of a prosecution for fishing in tidal water, for the prosecutor to be prepared with evidence to show his possession of the fishery and thereby to induce the magistrates to decide that the claim of the defendant is not made *bona fide*, but simply for the purpose of escaping conviction. A bare assertion of the public right without more would appear to be insufficient; but if it is supported by evidence of *uninterrupted* fishing by members of the public and the prosecutor does not prove evidence of his ownership of a several fishery it will be held to be a *bona fide* claim (*k*).

In former times, when a distinction was drawn between a "several" and a "free fishery," the remedies for disturbing it were different; but now under the Judicature Acts the same action will lie for any kind of fishery (*l*).

An action will lie for the disturbance of a fishery (*m*), and an injunction may be granted to restrain such pollution of fresh waters (*n*), or such unlawful exclusion of tidal waters (*o*), as tends

(*f*) *Hargreaves v. Diddams*, (1875) 10 L. R. (Q. B. 582; *Musset v. Burch*, (1876) 35 L. T. 486; *Hudson v. McRae*, (1863) 4 B. & S. 585.

(*g*) *Legg v. Pardoe*, (1860) 9 C. B. N. S. 289; 30 L. J. C. P. 108; 7 Jur. N. S. 499; 9 W. R. 234; 3 L. T. 371.

(*h*) *Paley v. Birch*, (1867) 8 B. & S. 336; 16 L. T. 410; *Bonith v. Brough*, (1869) 33 J. P. 694.

(*i*) *Hudson v. McRae*, (1863) 4 B. & S. 585.

(*k*) *Reg. v. Peak*, (1863) 8 L. T. N. S. 536.

(*l*) *Oke's Fishery Laws*, p. 13.

(*m*) *Child v. Greenhill*, (1639) Cro. Car. 553; *Smith v. Kemp*, (1692) 2 Salk. 636.

(*n*) *Alfred's Case*, (1610) 9 Rep. 59 a; *Fitzgerald v. Firbank*, [1897] 2 Ch. 96.

(*o*) *Bridges v. Highton*, (1865) 11 L. T. N. S. 653. See *Coulson & Forbes*, Chap. III.; *Att.-Gen. v. Birmingham*, (1858) 4 K. & J. 528; *Oldaker v. Hunt* (1854, 6 De G.

to destroy a private right of fishing. Throwing down a weir whereby a fishery below is overflowed unduly and the fish driven away is a trespass (*p*). Nets and traps which may be lawfully used in a fishery must be such as will not injure the rights of others (*q*). The nets and engines which are lawful are now regulated by statute and by bye-law. The subject is dealt with later. The owner of a fishery has a right to have the fish come to his fishery in the ordinary course of nature, and any person doing any act which may interfere with such right may be restrained. Infringing an ancient weir or doing any unlawful act which stops or hinders the passage of fish or causes damage to the upper fisheries is an actionable injury (*r*).

The Court of Admiralty at one time claimed jurisdiction over fisheries in tidal waters. Formerly numerous local Admiralty Courts exercised this jurisdiction, regulating the season, size of the mesh of nets, &c. Their proceedings were summary by bye-laws and fines, and in the case of nets of illegal mesh, the remedy was simple and practical; the officers of the Court burnt the net. It has, however, been decided as regards fisheries on the foreshore that they are within the county and are within the jurisdiction of the justices and not of the Admiralty, whether when covered with water or not (*s*).

In an action of trespass to a several fishery the defendant pleaded that it was an arm of the sea and issue was joined. It was held that the defendant was entitled to a verdict, because the plaintiff was bound to set up a claim to a several fishery in a replication (*t*).

In an action of trespass to a fishery, if the defendant does not justify under the owner of the soil, or set up some title adverse to

M. & G. 376; 19 Beav. 485; *Bulder v. Crofton*, (1862) 6 L. T. N. S. 778; *Att.-Gen. v. Luton Local Board*, (1856) 2 Jur. N. S. 180; *Bostock v. North Staffordshire Railway*, (1852) 5 De G. & Sm. 584.

(*p*) *Courtney v. Collet*, 1697 1 Raym. (Ld.) 272.

(*q*) *Warren v. Matthews*, 1793 1 Salk. 357; 6 Mod. 73; *Woolrych on Waters*; *Gould on Waters*, sect. 186.

(*r*) *Wild v. Horabin*, (1806) 7 East, 195; 3 Smith, 244; 2 Roll. Ab. 142; *Hamilton v. Domesgill*, (1795) 3 Ridgway, 267; *Woolrych*, p. 189; *Leconfield v. Lonsdale*, (1869) L. R. 5 C. P. 657; *Roll v. Wright*, 1868 L. R. 3 Q. B. 286; *Callis on Sewers*, 258; *Vin. Ab. Nuisance*, 3; *Hale, De Jure Maris*, c. 3, § 5; *Case of Chester Mill*, 1609) 10 Rep. 138; *Duke of Devonshire v. Hordatt*, 1827) Hud. & B. 322; *Duke of Devonshire v. Smith*, 1833 Al. & Nap. 442; *Williams v. Willour*, (1838) 8 A. & E. 314; *Lord Templeman v. Allen*, 1845 8 Ir. L. R. 199; *Barker v. Faulkner*, [1898] W. N. 69; *Whelan v. Hewson*, 1871 Ir. R. 6 C. L. 283; *Prior of Rochester v. Molyneux*, Inq. p. m. 33 Edw. III. [2 Nos.] No. 84. The defendant erected five weirs in his Manor of Cherdesle on the Thames which injured the fishery of the Prior in his Manor of Hadenham. They were removed by the sheriff.

(*s*) *Embleton v. Brown*, (1860) 3 Ell. & Ell. 234.

(*t*) *Crichton v. Colclery*, (1870) 19 W. R. 107.

the plaintiff's title, it would appear that the plaintiff need not show title but merely possession (*u*).

Ejectment, formerly laid for a fishery, where it was a fishery with the soil; but it should be brought for land covered with water (*x*). It is now recoverable in an action for the recovery of land.

(*u*) *Holford v. Baile*, (1846) 13 Q. B. 426; 10 Jur. 822; *Marshall v. Ullswater*, (1863) 3 B. & S. 732; *Harper v. Charlesworth*, (1825) 6 D. & R. 572; *Jones v. Chapman*, (1845) 14 M. & W. 124.

(*x*) *Molineux v. Molineux*, 1606) Cro. Jac. 146; *Herbert v. Laughlins*, (1637) Cro. Car. 492; 1 Lev. 212; Sid. 416; 1 Roll. Ab. 789; 2 Bulst. 28; 3 Leon. 128; Style, 32; *Waddy v. Newton*, (1721) 8 Mod. 277.

PART II.

STATUTE LAW RELATING TO FISHERIES.



CHAPTER I.

SUMMARY OF LEGISLATION RELATING TO FISH AND FISHERIES.

THE Legislature has from very early times been watchful to prevent the undue destruction of fish, and also to keep open the courses of navigable rivers. In early ages weirs and fishing engines multiplied exceedingly in all the great rivers of the kingdom, and so encroached on the course of the rivers as to become serious impediments to the navigation and the cause of great destruction of migratory fish. The earlier legislation was directed primarily to the putting down these weirs as impediments to navigation, nothing being specially enacted as regards the preservation of fish; but of course, when the free course of the navigation was secured, passage was left for the fish, and incidentally these statutes had the effect of assisting to preserve fish, while they were effectual as to keeping open the course of the rivers for navigation. The statute of 12 Edward IV. c. 7, states that the legislation as to weirs was for the benefit of the navigation of rivers, and also in safeguard of all the fry of fish spawned within the same. Magna Charta enacts "that all weirs from henceforth shall be entirely put down on the Thames and Medway and throughout all England except by the sea coast." The charter had no special reference to fish, and did not make any direct enactments for its preservation. It is not until the early part of the reign of Edward I. that we meet with any instance of an attempt to fix a close season or regulate the use of nets in salmon rivers, viz., by the Statute of Westminster the Second, 13 Edward I., A.D. 1285. About seven years before the passing of that statute, viz., in 6 Edward I., A.D. 1278, we find in the *Placita Coronæ* for Cumberland an interesting example of orders made for the management and regulation of salmon fisheries by the men of the county with the approval of the Justices in Eyre. They relate to the Eden and Esk, in the county of Cumberland, and are made under the "*Capitula Itineris*." The articles to be inquired of at the Eyre by the grand jury are set out

in *Fleta*, lib. 1, cap. 20. Among them we find, § 18: "De purpres-turis super Regem factis in terra in mari et in aqua dulci infra libertatem vel extra." § 40: "De hiis qui piscantur cum kidellis." Under these articles presentments were made by the juries and orders promulgated, fixing close times for salmon from the 29th September till 30th October, and from the 1st May till 24th January, regulating the use of nets and bucks, ordering a free gap through which a sow and her pigs can pass, and appointing conservators of the rivers in the county (*a*).

(a) The text is as follows: "Juratores de Lyth et Eskedale et Juratores de Cumberland et Allendale presentaverunt quod magna destructio fit in aquis de Edene et Esk et in aliis aquis in Comitatu isto de salmonibus tempore quo salmones ascendunt ad friandum et similiter de salmunculis tempore quo descendunt ad mare ad magnum detrimentum totius Comitatus et omnium Comitatum adjacentium, et petierunt ex parte totius Comitatus quod statutum et provisio fiat per quod predicta destructio decetero non fiat. Et ideo de consensu totius Comitatus tam militum quam aliorum liberorum hominum de Comitatu isto, nullo reclamante nec contradicente, statutum est et provisum quod a festo Sancti Michaelis (29th September) usque ad festum Sancti Andreae (30th November) non trahatur aliquod rete vel ponatur ad gurgites vel ad stagna vel ad molendina vel ad exclusas molendinarum, et quod nullus piscetur infra predictas aquas vel alias aquas in Comitatu isto cum retibus sterkildis vel quocunque alio ingenio infra predictum tempus vel sine ingenio. Statutum est etiam et provisum quod a festo Apostolorum Philippi et Jacobi (1st May), usque ad Nativitatem Sancti Johannis Baptiste (24th June), non ponatur aliquod rete vel wile sive borachia ad stagna vel molendina vel ad exclusas molendinarum in predictis aquis, nec ponatur rete aliquod infra predictum tempus ad gurgites nisi per custodes ad hoc deputatos sive deputandos; et quod maella retis sit ita larga quod salmunculi per medium transitum possunt habere, videlicet, quod sit de longitudine quatuor pollicium. Statutum est etiam et provisum quod quotienscunque piscator aliquis aut molendinarius vel aliquis alius contra istam provisionem deliquerit, et quotienscunque super hoc convictus fuerit, mittatur ad prisonam domini Regis, et non relegetur nisi de consensu custodum ad hoc provisorum vel providendorum. Et quia Juratores testantur quod Thomas de Multon de Gilleslaund, sicut et omnes antecessores ejus fecerunt a tempore a quo non extat memoria, cepit emendas de omnibus retibus illicitis per aquam de Edene in quodam loco qui vocatur Pewburg per visum militum et aliorum ad custodiam aquarum deputatorum, ita tamen quod si ballivi domini Regis preveniant, tunc correctiones et judicia pro hujusmodi transgressionibus ad dominum Regem pertinere debant. Ideo inde loquendum. Statutum est etiam et concorditer consideratum quod omnes borachie ad omnia molendina in aquis predictis per totum Comitatum decetero deponantur super tonisfacturam domini Regis xl. s. illius ejus borachia fuerit quotienscunque hujusmodi ingenium in aquis predictis inveniat et convinci poterit ejus illa sit. Et sciendum quod non debent esse in predictis aquis nisi tria minuta retia de consuetudine quorum maella cum nodo debet esse de longitudine trium pollicium ad capiendum lampredas et nullus debet piscari cum illis nisi a festo Sancti Andreae (30th November), usque ad quindenam proximam ante festum Sancti Johannis Baptiste (24th June). Et dominus Rex in Castro suo Karlioli habebit unum, Cives Karlioli aliud in stagno suo ad gardinum quod arentatur in firma Civitatis Karlioli pro xv. libris et in quo nullus piscari debet sine licentia eorundem Civium; et si plura retia inveniantur deponantur per custodes aquarum ad hoc deputatos. Et quia predicti Juratores presentant et totus Comitatus queritur quod Prior de Sancta Bega habet duo ingenia que cupe vocantur ad capiendum salmones in stagno suo de Staynblune ad nocumentum totius Comitatus ubi temporibus retroactis non habebat nisi unam tantum, et altera levata fuit jam sex annis elapsis sine warranto et post ultimum iter Justiciariorum, ideo ipse in misericordia. Et preceptum est Vicecomiti quod altera cupa deponatur per visum Juratorum ad custus ipsius Prioris. Statutum est et firmiter injunctum quod in quolibet stagno aquarum de Edene, Esk et Derwent et in ceteris aquis ubi salmones

It is possible that these orders and regulations made in the county of Cumberland may have been the germ of the subsequent legislation for the protection of fisheries.

The first statute which fixes the close season for salmon is the Statute of Westminster the Second, 13 Edward I. stat. 1, c. 47, A.D. 1285 (*b*). It begins thus: "It is provided that the waters of Humber, Ouse, Trent, Done, Arre, Derwent, Wherfe, Nidd, Youre, Swale, Tees, Tyne, Eden, and all other waters wherein salmon be taken, shall be in defence for taking salmon from the Nativity of Our Lady (8th September) until Saint Martin's Day" (11th November). It forbids taking of the young of salmon from the middle of April until the Nativity of St. John the Baptist (24th June).

The next statute is 17 Edward II. c. 13, A.D. 1324 (*c*). It declares the prerogative of the King to whales and great sturgeon taken in the sea or elsewhere within the realm, except in certain places privileged by the King.

In 1350 we find the next statute relating to weirs, 25 Edward III. st. 4, c. 4 (*d*). It orders the removal of all weirs, mills, and other fixed engines which had been set up in navigable rivers in and after the time of Edward I. This Act was confirmed by 45 Edward III. c. 2, A.D. 1371 (*e*), and a penalty of 100 marks was to be imposed on any one who repaired a weir contrary to the statute.

In the Parliament Roll (*f*) of 51 Edward III., A.D. 1376, we find the first mention of trawling. The Commons petition the King, complaining that, where in creeks and havens of the sea there used

capi possunt in fylo earundem aquarum ex antiqua consuetudine debet esse unum foramen ita largum quod una sus cum quinque parcellis suis possit intrare, et modo ultra mensuram artata sunt, videlicet apud Cokermue, Camberton, Staynburne et Wyrkington, quod de cætero hujusmodi foramina allargientur, per visum Juratorum ad custas eorum qui ea artaverunt. Et sciendum quod isti sunt custodes de consensu totius Comitatus electi ad predictas aquas in forma predicta custodiendas, scilicet. Robertus de Quyterig, Walterus de Bampton, Ricardus de Stokes, Bertinus de Surstanfeld, Willelmus de Uthredesby, Adam de Tynemuthe, Adam de Thoresby, Johannes filius Elyæ, Henricus de Sabluns, Robertus de Ecardely, Ricardus Soor, Adam Reed de Brimscayth. Et omnes custodes sacramentum fecerunt coram Justiciariis quod fideliter se habebunt in prædicta provisione custodienda, et si unus prædictorum custodum obierit vel impotens corporis sui fiat, vel inutiliter se gesserit et super hoc convictus fuerit, alius loco suo per socios eligatur, qui prestito sacramento coram Vicecomitem loco alterius substituat. Retia autem et ingenia quecumque si infra prædictas aquas contra prædictam provisionem fuerint inventa coram predictis custodibus qui ea ceperint comburantur. Et sciendum quod totus Comitatus consentit in istam provisionem duraturam imperpetuum ad promotionem totius Comitatus et aliorum Comitatum adjacientium." [Assize Roll, No. 132. m. 32 d.] See also Pat. 5 Edw. I. m. 22; Order to make gaps of 26 feet in weirs in the Severn. Pat. 9 Edw. I. m. 24 d; 11 Edw. I. m. 16; Commissions to survey weirs in Severn and Wye.

(*b*) Rep. 24 & 25 Vict. c. 109, s. 39.

(*c*) Still in force.

(*d*) Rep. St. Law Rev. 1863.

(*e*) Rep. St. Law Rev. 1863.

(*f*) Rot. Parl., Vol. II., p. 369 a.

to be plenteous fishing, to the profit of the kingdom, certain fishermen for seven years past have subtilly contrived an instrument which they called "wondyrchoun," made in the manner of an oyster dredge, but which is considerably longer, upon which instrument is attached a net so close meshed that no kind of fish, be it ever so small, which enters therein can escape, but must stay and be taken. And that the great and long iron of the wondyrchoun runs so heavily and hardly over the ground when fishing that it destroys the flowers of the land below water there, and also the spat of oysters, mussels, and other fish upon which the great fish are accustomed to be fed and nourished. By which instrument in many places the fishermen take such quantity of small fish that they do not know what to do with them; and that they feed and fat their pigs with them, to the great damage of the Commons of the realm and the destruction of the fisheries, and they pray for a remedy. In consequence of this petition a commission was appointed to inquire into the matter (*g*). The commissioners met at Colchester, and reported that the net called wondyrchoun was three fathoms long and ten of men's feet wide, and that the net had a beam ten feet long, at the end of which were two frames formed like a colerake; that a leaded rope weighted with many great stones was fixed on the lower part of the net between the two frames, and that another rope was fixed with nails on the upper part of the beam, so that the fish entering the space between the beam and the lower net were caught. The net had meshes (maskes) of the length and breadth of two thumbs. They say that the net ought to be used in the deep water, and not in the waters of Colne and Pont, or in any other like places. No legislation appears to have taken place in consequence of this report, but we find at later times trawling, which is evidently the mode of fishing above described, was prohibited in many private fisheries.

The next statute relating to the capture of salmon is 13 Richard II. st. 1, c. 19, A.D. 1389 (*h*), which confirms and re-enacts the statute of 13 Edward I. It prohibits the use of nets called stalkers, or other nets or engines whatsoever they be, by which the fry or breed of salmon, lampreys, or other fish may in anywise be taken or destroyed in any of the waters of the realm at any time of the year. It alters the close season for all waters in the county of Lancaster, and the rivers Lune, Wyre, Mersey, and Ribble to be from Michaelmas to the Purification of Our Lady (1st February). "Au a cause que le salmones ne sont pas saisonables en les ditz ewes par le temps suisdite."

The weirs in the kingdom were again the subject of legislation

g) Inq. ad quod damnum 51 Edw. III., No. 29.

h) Rep. 44 & 45 Vict. c. 59, s. 2.

in 1393. The statute of 17 Richard II. c. 9 (*i*), recites the statutes 13 Edward I., 13 Richard II., and orders that the Justices of the Peace are to be commissioners for carrying out the Acts recited; and they are also to survey and search all the weirs that be not too straight for the destruction of such fry and brood, but with a reasonable opening, after the old assize used or accustomed, and the Mayor of London is to conserve the Thames from Staines downwards, and also the river Medway. In 1397 the former statutes against weirs were confirmed by 21 Richard II. c. 19. This was repealed by 1 Henry IV. c. 3; but in 1399 this and the former statutes of weirs were confirmed by 1 Henry IV. c. 12 (*k*).

In 1402, by the statute 4 Henry IV. c. 11 (*l*), which is a statute relating to weirs, we have the first mention of weirs causing injury to fish. The preamble states a complaint that by weirs and other fixed engines the young fry of fish are destroyed and against reason wasted and given to swine to eat, contrary to the pleasure of God and the great damage of the King and his people. The statute then directs the previous statutes to be put into execution, and that commissions are to be awarded to certain Justices and others in each county to inquire and enforce the statutes. This and other statutes were confirmed in 1413, by 1 Henry V. c. 2 (*m*).

The next statute, 2 Henry VI. c. 15, A.D. 1423 (*n*), deals with the use of nets. By that Act it is ordered that the standing of nets and other engines called trinks, and all other nets which be, are wont to be fastened and hanged continually day and night by a certain time of the year to great posts, boats and anchors overthawrt the river of Thames and other rivers of the realm, which standing is a cause of as great and more destruction of the brood and fry of fish, and disturbance of the common passage of vessels, as be the weirs, kiddells, or any other engines, be wholly defended for ever. The possessors of nets were permitted to use them if they did so by drawing and pulling hem by hand, as other fishers do with other nets, and not fastening or tacking the said nets to posts, boats, or anchors, saving always to every of the King's liege people, their right, title, and inheritance in their fishings in the said water.

In 1472, the statute 12 Edward IV. c. 7 (*o*), recites the previous statutes relating to weirs and orders them to be enforced. This Act calls special attention to the importance of the protection of fish. It recites Magna Charta, and says that it was made for the protection of navigation and for safeguarding the fry of fish, and confirms all previous statutes for pulling down weirs, and imposes a penalty of 100

(*i*) Rep. 24 & 25 Vict. c. 109, s. 39.

(*k*) Rep. St. Law Rev. 1863.

(*l*) Rep. 24 & 25 Vict. c. 109, s. 39.

(*m*) Rep. St. Law Rev. 1863.

(*n*) Rep. 24 & 25 Vict. c. 109, s. 39.

(*o*) Rep. St. Law Rev. 1863.

marks on persons who do not perform the award of the commissioners under the statute 4 Henry IV. c. 12, and a like penalty on persons who continue in default after the end of three months' warning.

The provisions of the Statute of Westminster the Second and the subsequent statutes, both as to suppressing nuisances to navigation, and what Lord Hale (*p*) calls "the conservancy as to fishing," were carried out by the regular and constant issuing of commissions of conservancy; but they extended only to those rivers which were frequented by salmon (*q*). The commissioners were directed to see that salmon were not taken out of season, and that the fry of salmon were not taken or destroyed contrary to the form of the statute (*r*).

Of commissions to see to the removal of weirs, kiddles, &c., numerous records exist (*s*).

There are also numerous examples of grants to individuals or to commissioners of the conservancy of particular rivers (*t*). Such commissions were, however (says Hale), confined to salmon rivers. There are also on the Rolls of Parliament several proceedings on petitions relating to the enforcement of the statutes for the putting down of weirs and the preservation of fish. See *Leconfield v. Lonsdale*, (1870) L. R. 5 C. P. at p. 688, and Rot. Parl. ii., 213 a, 229 b, 305, 321 b, 332 a, 333 b; iii., 201 a; iv., 8 a, 36 a; vi., 158 b, 159 b.

There were also many local Courts of Admiralty that exercised jurisdiction over fisheries, and by orders and bye-laws regulated the size of meshes of nets, use of particular fishing engines, close times in ports and rivers, as the Corporation of London in the Thames and Medway, the Corporations of Colchester, Ipswich, &c. Some lords of manors on the sea coast held similar Courts: as the manor of Brancaster in Norfolk.

The Court of Admiralty itself claimed jurisdiction over fisheries in earlier times and down to the time of Charles I., when its proceedings became very oppressive and illegal (*u*).

In 1533, 25 Henry VIII. c. 7 (*x*), an Act was passed intituled An

(*p*) De Jure Maris, p. 390.

(*q*) *Ibid.*, p. 391.

(*r*) Examples of these commissions will be found in the following patents: Patent Rolls, 33 Edw. I. p. 1, m. 6 d; 5 Edw. III. p. 1, m. 14 d; 8 Edw. III. p. 1, m. 18 d; 11 Edw. III. p. 2, m. 4 d; 30 Edw. III. p. 2, m. 10 d; 31 Edw. III. p. 1, m. 8 d; 33 Edw. III. p. 1, m. 4 d; 44 Edw. III. p. 1, m. 17 d; 45 Edw. III. p. 2, m. 29 d, 37 d; 50 Edw. III. p. 1, m. 18 d, 31 d; 3 Rich. II. p. 2, m. 32 d; 6 Rich. II. p. 1, dorse; 8 Rich. II. p. 1, m. 21 d; 9 Rich. II. p. 2, m. 39; 11 Rich. II. p. 2, m. 30 d; 17 Rich. II. p. 1, m. 30 d.

(*s*) See Patent Rolls, 28 Edw. III. m. 6 d, 9 d; 6 Hen. VI. p. 1, dorse; 16 Hen. VI. p. 2, dorse; 20 Hen. VI. p. 2, dorse; 21 Hen. VI. p. 2, dorse; 32 Hen. VI. dorse.

(*t*) Patent 34 Edw. III. p. 2, m. 12, custody of the rivers Humber, Ouse and Derwent; and see Hale, p. 391.

(*u*) See Mr. Marsden's Introduction to Select Pleas of the Court of Admiralty, Ed. Selden Soc., vol. ii.

(*x*) Rep. St. Law Rev. 1863.

Act against Killing of young Spawn or Fry of Eels and Salmon. It recites as follows: "Forasmuch as great hurt and daily inconvenience have and do ensue unto all the King's subjects of the realm, by the greedy appetites and insatiable desire which sundry of them occupying fishings have used by taking, killing, and destroying the young spawn, fry, or brood of eels and salmon, as well in salt rivers as in fresh rivers, lakes, splashes, fens, and marshes in many parts of this realm, to the no little hindrance and derogation of the common weal of the same, as also in killing of salmons when they be unseasonable and not wholesome for man's body, commonly called kipper salmons;" and enacts that for the space of ten years no one is to take from 1st February to 31st July any fry of eels, or from 1st May to 1st September any young, fry, spawn, or brood of any kind of salmon, called "lakspynkes, smowtes, or salmon-pele," or any salmons not in season called kipper salmons from the 14th September to 11th November. In 1539 we find the first Act to deal with the theft of fish from private ponds (31 Henry VIII. c. 2)(y). It was made a felony to take fish from ponds, stews and motes, without the consent of the owner. In 1558 the Act of 1 Elizabeth, c. 17 (z), for the preservation of spawn and fry of fish, was passed. The Act recites: "For the preservation hereafter of spawn, fry and young breed of eels, salmons, pikes, and of all other fish which heretofore hath been much destroyed in Rivers and Streams, salt and fresh, within this Realm, insomuch that in divers places they feed swine and dogs with the fry and spawn of fish and otherwise, lamentable and horrible to be reported, destroy the same, to the hindrance and decay of the Commonwealth," and enacts that no one with any manner of Net Weele, But, Taining, Kepper, Lime Crele, Raw Fagnet, Trohnet, Trimenet, Trimboat, Stalboat, Web-lister, Seur, Lammet, or other device made of hair, wool, line or canvas, or shall use any Heling Net or Trim Boat, or by any other device, shall take or kill young brood, spawn, or fry of eels, salmon, Pike, or Pikerel, or any other fish in any flood-gate, Pipe, at the Tail of any Mill, Wear, or in any straights, streams, Brooks, Rivers, fresh or salt, within this realm, or by any ways or means take and kill any salmons or trouts not being in season, being kepper salmons or kepper trouts, shedder salmons or shedder trouts. It also enacted that no one was to take or kill Pike or Pikerel not being in length ten inches or more, or any Salmon not being in length sixteen inches or more, or any trout not being in length eight inches or more, or any Barbel not being in length twelve inches or more. Fish were not to be caught with any manner of net, tramel, Kepe, Wire, Hivie, Crele, or other means,

(y) Rep. 7 & 8 Geo. IV. c. 27.

(z) Rep. in part 18 Geo. III. c. 33, s. 1; 24 & 25 Vict. c. 109, s. 39; St. Law Rev. 1863; residue expired.

but only with net or tramel whereof every Mesh or Mask was two inches and a half broad, excepting devices for lawfully taking Smelts, Loches, Minnies, Bulheads, Gudgeons, or eels, provided other fish were not taken.

In 1562 we find a further Act (5 Eliz. c. 21) (*a*) relating to the stealing of fish. That Act made it an offence, punishable by three months' imprisonment and payment of treble damages, to destroy dams, &c., of ponds, pools and stews, or to take fish without authority from any ponds, pools, stagnes, stews, or pits.

In 1571 is the first instance of the protection of fishing-nets at sea (the statute 13 Eliz. c. 11) (*b*). The Act enacts that, "for the avoyding of the lewde outrages commytted and done upon the sea coasts of Norfolk and Suffolk by the Catches, Mongers, and Picardes pretending to buy fresh herrings, and which do cut in sunder dyvers peeces of Fyshermen's netts traveling the High Seas to take fresh Herrings, to the utter undoing of the said poore Fishermen." It was therefore enacted that "no ships, boats, or vessel called Catch, Monger, and Picarde" shall, between 14th September and 14th November, from sunset to sunrise, ancker on the mayne sea or in the Common Streame or Trade of fyshing where the fishermen use to dryve, upon pain of forfeiture of their ship and tackle, or the value thereof. Half the value is to be the King's, and half is to go to the bailiffs of Yarmouth to recompense the parties whose nets were cut and for the repair of the haven there.

In 1603 was passed the Act 1 James I. c. 23, relating to the Cornish pilchard fishery. This Act is still in force, and is printed hereafter.

In 1605 was passed the Act of 3 James I. c. 12 (*c*), for the better preservation of sea fish. The preamble is interesting, as showing the view then taken as to the propagation of sea fish: "Forasmuch as it is certainly known by daily experience that the Brood of Sea fish is spawned and lieth in still waters, where it may have rest to receive nourishment and grow to Perfection, and that it is there destroyed by Wears, Draw-nets, and nets with Canvas, or like engines, in the Middle or Bosom of them, in Harbours, Havens and Creeks within this Realm, to the great damage and Hurt of Fishermen and hindrance of the Commonwealth; for that every Wear near the Main Sea, taketh in Twelve Hours sometimes the quantity of Five Bushels, sometimes Ten, sometimes Twenty or Thirty Bushels of the Brood of Sea fish; and also those which use Draw-nets, nets with Canvas, or Engines in the midst of them, do every day they fish destroy the Brood of all the sorts of fish aforesaid in great multitudes." It was therefore

(*a*) Rep. 7 & 8 Geo. IV. c. 27, s. 1.

(*b*) Rep. 3 Geo. IV. c. 41, s. 2; 5 Geo. IV. c. 74, s. 23.

(*c*) Rep. 24 & 25 Vict. c. 109, s. 39.

enacted that no one should set up any new wears along the Sea Shore, or in any Haven, Harbour, or Creek within five miles of the Mouth of any Haven or Creek, or should willingly take, destroy, or spoil any spawn, fry, or brood of any sea fish in any wear or other device; and no one was to fish within the above limits with any Draw-net or Drag-net with meshes of less than one and a half inches from knot to knot, except for taking Smoulds in Norfolk, or with any net with canvas or other device by which fry might be destroyed."

The Act was not to apply to nets for herrings, pilchards, sprats, or laidnian, or to the Isle of Anglesey.

In 1662 the Act of 14 Charles II. c. 28 (*d*), forbade the use of drift-nets, trammels, or stream-nets within a league and a half of the coast of Cornwall and Devon from the 1st June to the 30th November. This was solely for the protection of the pilchard seine-net fishery. The Act also made it a penal offence to purloin pilchards from nets, boats, or cellars.

In 1670 was passed the Act of 22 & 23 Charles II. c. 25 (*e*), entitled An Act for the better preservation of the game, and for securing warrens not inclosed, and the several fishings of this realm. It forbade any one to take fish without the consent of the owner in any river, stew-pond, mote, or other water. This was followed by more stringent measures in 1692. In that year the Act of 4 & 5 Will. & Mary, c. 23 (*f*), forbade every person who was not the owner or occupier of a fishery for the time being to keep nets, rods, or other fishing implements. This was not to apply to the makers and sellers of such implements, nor to any fisherman or his apprentice lawfully authorised to fish in navigable rivers or waters with lawful nets and engines; but every one of them might (according to the laws and orders made and to be made or settled for the good order, rule and government of such navigable rivers and waters), use the trade of fishing.

In 1699 the Act for making Billingsgate a market for fish (10 & 11 Will. III. c. 24) prohibited the landing of lobsters that were not eight inches in length from the peak of the nose to the middle fin of the tail.

In 1714 the Act of 1 Geo. I. st. 2, c. 18 (*g*), enacts that, as the breed and fry of sea fish has been of late years greatly prejudiced and destroyed by the using of too small size or mesh, and by other illegal and unwarrantable practices, no one shall use at sea, upon the coast of England, any trawl-net, drag-net, or set-net for catching any kind of fish except herrings, pilchards, sprats, or laidnian, which has any mesh of less size than three and a half inches from knot to knot,

(*d*) Rep. 31 & 32 Viet. c. 45, s. 71.

(*e*) Rep. 1 & 2 Will. IV. c. 32, s. 1.

(*f*) Rep. 1 & 2 Will. IV. c. 32, s. 1.

(*g*) Rep. 31 & 32 Viet. c. 45, s. 71.

or which has any false or double bottom, cod, or pouch. The Act also specifies the sizes of fish that may not be sold. The measurement is to be from the eyes to the utmost extent of the tail. They are : Bret or Turbot, 16 in. ; Brill or Pearl, 14 in. ; Codlin, 12 in. ; Whiting, 6 in. ; Bass and Mullet (grey ?), 12 in. ; Sole, 8 in. ; Plaice or Dab, 8 in. ; Flounder, 7 in. (*h*). The 14th section contains the following : "And whereas the several Acts of Parliament heretofore made for the preservation of fishing within the rivers of this realm have hitherto proved ineffectual in respect to the rivers Severn, Dee, Nye, Teame, Were, Tees, Ribble, Mersey, Dun, Air, Ouse, Swaile, Calder, Wharf, Eure, Darwent, and Trent, for want of a due encouragement to be given to such persons who could discover the many illegal practices and abuses done therein, and by reason of the dilatoriness and expensiveness of the suits and proceedings directed by the said Acts for punishing such abuses. Wherefore, for remedy thereof, and for the better securing the spawn, fry and breed of salmon in the said rivers, be it further enacted by the authority aforesaid that if any person or persons whatsoever shall at any time hereafter lay or draw any kind of nets, engines, or devices, wilfully do or commit, or cause to be done or committed, any other act whatsoever in the said rivers or in any of them, whereby the spawn or small fry of salmon therein, or any kepper or shedder salmons, or any salmon not being in length eighteen inches or more from the eye to the extent of the middle of the tail, shall be taken and killed or destroyed, or shall hereafter make, erect, or set any bank, dam, hedge, or stank, net or nets cross the said rivers, or any part thereof, whereby the salmon therein may be taken, or hindered from passing or going up the said rivers to spawn," or shall fish in close season or with other nets than allowed by 1 Eliz. c. 17, and 30 Car. II. st. 1, c. 9, &c. Every person so offending shall, on conviction before the justices of the peace, forfeit 5*l*. for every such offence and the fish taken and nets used. The justices were empowered to cause such banks, dams, hedges, or stanks, made or erected across the said river, to be demolished and removed at the charges of the offender. These provisions did not apply to ancient weirs or locks upon any rivers. The Act also provided that no salmon under six pounds in weight were to be sent to London from the rivers mentioned above.

In 1760, by the Act of 33 Geo. II. c. 27 (*i*), bret or turbot, brill or pearl, though under the sizes allowed by 1 Geo. I. st. 2, c. 18, were allowed to be sold provided they were not sold at a greater price

(*h*) Fish caught by hook, which though thrown back into the sea could not be preserved alive, were allowed to be sold. See 22 Geo. II. c. 49, s. 21, but repealed 29 Geo. II. c. 39, s. 14.

(*i*) Rep. 31 & 32 Vict. c. 45, s. 71.

than sixpence a pound. The Act also provides that no one was to kill or have in his possession any spawn, fry, or brood of fish, or any unsizeable fish, or any fish out of season, or any smelt which shall not be full five inches in length.

In 1765 the Act of 5 Geo. III. c. 14 (*k*), amended the law relating to the larceny of fish bred in or preserved in any river, stream, pool, moat, stew, or other water in any park, paddock, or other private ground, or in any river or stream, pond, pool or other water not being of the description before mentioned. In the first instance, the penalty was transportation for seven years, in the latter a sum of 5*l*.

In 1771 was passed the Act of 11 Geo. III. c. 31, relating to herrings. Sections 11—13 are still in force.

In 1791 the Act of 31 Geo. III. c. 51 (*l*), entitled An Act for better protecting of the several Oyster Fisheries within this Kingdom, was passed. It recites: "Whereas the maintaining and preserving the several oyster fisheries of this kingdom is a great national object, and whereas the laws now in being are not sufficient effectually to maintain and preserve the said fisheries and to prevent the destroying of the oyster brood." It therefore made it a misdemeanour for any person, not lawfully entitled, to fish with or use any net, trawl, dredge, or other instrument within the limits of any oyster fishery. This provision was not to apply to persons fishing for floating fish in the waters or creeks within the limits of any oyster fishery with any net adapted for catching floating fish only.

This Act was added to in 1808 by the Act 48 Geo. III. c. 144 (*m*), which made it a felony to wilfully steal, take and carry away oysters or oyster brood, from any oyster bed or oyster laying, or oyster fishery, being the property of any person or body politic or corporate, and sufficiently marked out as such.

In 1818 the Act of 58 Geo. III. c. 43 (*n*), entitled An Act for preventing the destruction of the Breed of Salmon and Fish of Salmon Kind in the Rivers of England, provided that conservators for the preservation of salmon in all rivers throughout England should be appointed by the justices of the peace. The justices were to fix a close season not exceeding 150 days. Persons were forbidden to destroy salmon by using hot lime, or filth, or material, or drug pernicious to fish, or to do anything to destroy the young of salmon, or to prevent salmon from going down the rivers. They were also forbidden to take or possess fry, unseasonable salmon, or salmon caught during any close season. The Act did not apply to nets or modes of fishing lawfully in use, or to rights of lords of manors, who

(*k*) Rep. 7 & 8 Geo. IV. c. 27, s. 1.

(*l*) Rep. St. Law Rev. 1861.

(*m*) Rep. St. Law Rev. 1873.

(*n*) Rep. 24 & 25 Vict. c. 109, s. 39.

are required by the Act to appoint conservators for the protection of rivers within their manors.

In 1827 the Malicious Damage Act (7 & 8 Geo. IV. c. 30) (*o*), made it a misdemeanour to destroy the dam of any fishpond or water in which there be a private right of fishery with intent to destroy or take fish, or to put any noxious substance into such a water for a like purpose. The Larceny Act of the same year (c. 29) (*o*) contained somewhat similar provisions to the Larceny Act, 1861.

In 1843 the Act of 1 Geo. I. c. 18, was repealed by 6 & 7 Vict. c. 33 (*p*), so far as it fixed a close season for the rivers mentioned in that Act, and the provisions of the Act of 58 Geo. III. c. 43, were made to apply to such rivers. In the same year the Sea Fisheries Act, 1843, was passed to bring in force the convention made with the King of France concerning the fisheries in the seas between the British Islands and France. This Act is now only in force as regards French subjects in the English Channel when outside the exclusive fishery limits.

In 1848 the provisions of the Act of 58 Geo. III. c. 43, were extended to the tributary streams of rivers and to salmon, trout and fish of the salmon kind by the Act of 11 & 12 Vict. c. 52 (*q*).

In 1855 further regulations as to oyster dredging in the seas between the United Kingdom and France were made by the Act of 18 & 19 Vict. c. 101 (*r*).

In 1861 three Acts relating to fisheries were passed—the Larceny Act, 1861, the Malicious Damage Act, 1861, and the Salmon Fishery Act, 1861—all of which are now in force. The latter Act repealed all the previous legislation as to salmon, and placed the general supervision of salmon fisheries in the Home Office. This Act provided that conservators should be appointed to carry out the provisions of the Act. It made certain modes of fishing illegal, and enacted that fishing weirs should have free gaps and fishing mill-dams have fish-passes attached to them.

Since 1861 various Acts relating to fisheries have been passed, some of which have been repealed. It is therefore only proposed to set out those Acts made since that date which are at present in force. Firstly, with regard to Sea Fisheries.

The Sea Fisheries Act, 1868.—This Act was passed to carry into effect the convention made with France in 1867. It also provided for the regulation of oyster fisheries and the granting of oyster orders by the Board of Trade. That part of the Act which relates to the convention with France is not at present in force, either as

(*o*) Rep. 24 & 25 Vict. c. 95, s. 1.

(*p*) 24 & 25 Vict. c. 109, s. 39.

(*q*) Rep. 24 & 25 Vict. c. 109, s. 39.

(*r*) Rep. 31 & 32 Vict. c. 45.

regards French subjects or British subjects, whether within or without the exclusive fishery limits.

The Oyster and Mussel Fisheries Orders Confirmation Act, 1869 (No. 2).—This Act amends sect. 45 of the Sea Fisheries Act, 1868.

The Sea Fisheries Act, 1875.—Amending the Sea Fisheries Act, 1868.

The Fisheries (Oyster, Crab and Lobster) Act, 1877.—This Act fixes the close time for the various sorts of oysters and regulates the sale of crabs and lobsters. It also gives power to the Board of Trade to regulate certain oyster and crab and lobster fisheries.

The Fisheries Dynamite Act, 1877.—Forbids the use of dynamite or other explosive within a league of the coast.

The Customs and Inland Revenue Act, 1881, s. 9, enables lobsters or fresh fish of British taking to be imported in British ships without report to the Customs.

The Sea Fisheries Act, 1883.—This Act is to carry out the convention as to fishing in the North Sea. It also applies its provisions to all ships within the exclusive fishery limits and to all British ships whenever outside such limits.

The Sea Fisheries Act, 1884.—Extends the provisions of Part III. of the Sea Fisheries Act, 1868, to certain cockle fisheries.

The Crown Lands Act, 1885.—This Act relates to the granting of leases on the sea shore by the Board of Trade and the Commissioners of Woods and Forests.

The Sea Fisheries Regulation Act, 1888.—This Act provides for the creation of sea fishery districts and their supervision by local fisheries committees.

The Fisheries Act, 1891.—This Act brings into force the declaration with Belgium as to the conduct of British and Belgian fishermen in the North Sea. It also extends the powers of local fisheries committees, and provides for the constitution of the Stour fishery district.

The North Sea Fisheries Act, 1893.—This Act regulates the sale of intoxicating liquors in the North Sea to sea fishing boats.

The Sea Fisheries (Shellfish) Regulation Act, 1894.—This Act empowers local fisheries committees to regulate shellfish fishing and fisheries.

The Merchant Shipping Act, 1894.—Part IV. of this Act deals with the registration and discipline of fishing boats. Many other sections also apply to fishing boats.

The Acts which are at present in force relating to salmon and freshwater fish are as follows:—

The Salmon Fishery Act, 1861.

The Salmon Acts Amendment Act, 1863.—This Act deals with the export of salmon.

The Salmon Fishery Act, 1865.—This Act amended the Salmon Fishery Act, 1861. It made further provision for the appointment of conservators and for the general management of salmon fisheries. It also provided for the appointment of special commissioners to hold inquiries throughout the kingdom as to the legality of fishing weirs and other modes of fishing with fixed engines. This commission held inquiries, and caused to be removed or altered in conformity with the Salmon Acts those erections which offended against these Acts.

The Salmon Acts Amendment Act, 1870.

The Salmon Fishery Act, 1873.—This Act amended the previous Acts relating to salmon by altering the constitution of boards of conservators and by increasing their powers.

The Salmon Fishery Act, 1876.—This Act gave power to a board of conservators to make bye-laws for a close season for trout within their district.

The Fisheries Dynamite Act, 1877.—This prohibited the use of dynamite or other explosive substance in a public fishery.

The Freshwater Fisheries Act, 1878.—This Act provided for the appointment and dissolution of fishery districts in waters frequented by trout and char. It also (*inter alia*) provided a close season for all kinds of freshwater fish other than pollan, trout, char, and eels.

The Salmon Fishery Law Amendment Act, 1879.—This fixed the close season for putts and putchers.

The Freshwater Fisheries Act, 1884.—This Act gave power by bye-law to determine the size of mesh of nets used for catching freshwater fish. It also provided for the appointment of conservators for waters frequented by freshwater fish.

The Freshwater Fisheries Act, 1886, amended sect. 11 of the Freshwater Fisheries Act, 1878.

The Salmon and Freshwater Fisheries Act, 1886.—This Act transferred to the Board of Trade the powers and duties of the Home Office.

The Fisheries Act, 1891.—Part III. of this Act provides for the formation of the Stour fishery district, and Part IV. explains the powers given by the Salmon and Freshwater Fisheries Acts as to legal proceedings for enforcing those Acts.

The Salmon and Freshwater Fisheries Act, 1892, dealt with the consignment of salmon, trout, and char by carriers.

CHAPTER II.

REGULATION OF SEA FISHERIES.

THE general supervision and control of the fishing and fishing vessels on the high seas, sanctioned by the conventions attached to the Sea Fisheries Acts, 1843—1891, and the North Sea Fisheries Act, 1893, is performed by the Board of Trade and by such other persons as are designated for that purpose in those Acts. The Board of Trade also enforces the provisions of the Merchant Shipping Act, 1894, as to the registration, manning and discipline of boats engaged in the sea fishing service. Within the exclusive fishery limits (*a*) the Board of Trade is the general authority for the supervision of the fisheries there.

By the Sea Fisheries Acts, 1868 and 1884, power is given to the Board of Trade to make orders for the establishment and improvement of several oyster, mussel and cockle fisheries, or to make orders for their maintenance and regulation (*aa*). They may amend such orders, if necessary, or annul them altogether. The Board may also prohibit, for a period not exceeding one year, the taking of oysters which are not on any bed in a several fishery or regulated by any order made by the Board of Trade. The Board can renew such a prohibition from time to time (*b*). The right to take crabs and lobsters which are not within a several right of fishery may also be prohibited or restricted by the Board of Trade (*c*).

In 1888 power was given to the Board of Trade by the Sea Fisheries Regulation Act, 1888, to create fishery districts comprising any part of the sea within which British subjects have the exclusive right of fishing on the coast of England and Wales.

In the order creating such districts the Board of Trade provides for the formation of local fisheries committees to regulate the fisheries within such districts. These committees have power to make bye-laws for regulating their districts. These bye-laws have to be approved by the Board of Trade (*cc*). If the powers of the Sea Fisheries

(*a*) See Territorial Waters Jurisdiction Act, 1878.

(*aa*) A list of such orders is set out in Appendix, *post*.

(*b*) Fisheries (Oyster, Crab and Lobster) Act, 1877, s. 5.

(*c*) *Ibid.*, s. 10.

(*cc*) These bye-laws are printed in the annual reports of the Inspectors of Sea Fisheries.

(Shellfish) Regulation Act, 1894, are used by such committees, the Board of Trade may sanction the expenses thereby incurred.

The Board of Trade appoints inspectors to supervise the carrying into effect of the various Fishery Acts, and their reports are annually laid before Parliament (*d*).

The local fisheries committees, which regulate the fisheries within the exclusive fishery limits of the kingdom, are formed by the Board of Trade on the application of a county or borough council to make a sea fisheries district over a part of the sea adjoining the coast of England and Wales, over which British subjects have the exclusive right of fishing (*e*). If the county or borough councils refuse or neglect to apply for the creation of a district after being requested to do so by not less than twenty inhabitant ratepayers interested in sea fisheries, such persons may apply to the Board of Trade, who can in such a case proceed to form a district, as if the councils had applied for one (*f*).

In the event of the area of the proposed district being within the jurisdiction of salmon conservators or of a harbour authority, the Board of Trade may, if it think fit, confer on such conservators or authority the powers of a local fisheries committee (*g*).

A local fisheries committee consists of a committee of a county or borough council, or, if two or more councils appear to be interested, of a joint committee. In addition to this committee of councillors, there have to be an equal number of members representing the fishing interests of the district, including members representing any board of salmon conservators having jurisdiction in the district. The actual number of members of the fisheries committee is fixed by the Board of Trade in the order creating the district (*h*).

A sea fisheries committee have power within their district to restrict or prohibit, either absolutely or subject to such regulations as may be provided by their bye-laws, any method of fishing for sea fish or the use of any instrument of fishing, or the fishing for or taking of all or any specified kinds of sea fish during any specified period (*i*), and may determine the size of mesh, form and dimensions of any fishing instrument. They may constitute any district of oyster cultivation for the purposes of sect. 4 of the Fisheries (Oyster, Crab and Lobster) Act, 1877, and may direct that the proviso to

d Salmon Fishery Act, 1861, s. 32; Salmon and Freshwater Fisheries Act, 1886, s. 6.

e Sea Fisheries Regulation Act, 1888, s. 1.

f *Ibid.*, s. 1, subss. 5.

g *Ibid.*, sect. 12 (2). A list of these districts is set out in the Appendix, *post*.

h Sea Fisheries Regulation Act, 1888, s. 1, sub-s. 2.

i Sea Fisheries Regulation Act, 1888, s. 2; the Fisheries Act, 1891, s. 7.

sect. 8 of that Act may not apply, and may repeal or amend any order under sect. 10 of that Act, or under the Sea Fisheries Act, 1884. They have also power to prohibit and regulate the deposit or discharge of any solid or liquid substance detrimental to sea fish or sea fishing, provided it does not affect the power of a sanitary or other local authority to discharge sewage in pursuance of any power given by a general or local Act of Parliament, or by a provisional order confirmed by Parliament (*k*). They may repeal and amend their own bye-laws, and may enforce the provisions of the Fisheries (Oyster, Crab and Lobster) Act, 1877, and any Act relating to sea fisheries (*l*). In order to carry into effect the powers conferred on them, they may appoint such officers as they deem expedient, but this is subject to the restrictions and conditions as to expenditure made by the council or councils by whom a local fisheries committee is appointed (*m*). These restrictions must be made before the officer is appointed (*n*). If the local fisheries committee contains representatives of more than one council, the restrictions and conditions as to expenditure can only be imposed by the common agreement of all the councils represented on the committee (*o*). Officers appointed by the local fisheries committee have power to stop and search any vessel or vehicle used in the district in fishing or conveying fish or any substance the deposit of which is prohibited or regulated by bye-law. They may search and examine all instruments used in catching or carrying fish, and seize any sea fish or instrument liable to be forfeited (*p*). These officers have the powers of a constable, and may, if duly authorised, enter suspected places (*q*). Besides the powers above set out a local fisheries committee has power to fix the size and condition at which shellfish, which includes all kinds of molluscs and crustaceans, may be removed from a fishery, and the mode of determining such sizes; to compel the re-deposit in specified localities of any shellfish, the removal or possession of which is prohibited by or in pursuance of any Act of Parliament; to enforce the protection of shellfish laid down for breeding purposes and the protection of culch and other material for the reception of spat; and to stock or re-stock any public fishery for shellfish, and for that purpose to incur such expenses as may be sanctioned by the Board of Trade (*r*).

(*k*) Sea Fisheries Regulation Act, 1888, ss. 2 (c), 13 (c).

(*l*) The Fisheries Act, 1891, s. 9.

(*m*) Sea Fisheries Regulation Act, 1888, s. 6.

(*n*) *Reg. v. Mayor of Plymouth*, [1896] 1 Q. B. 158.

(*o*) *Reg. v. North Riding of Yorkshire County Council*, [1899] 1 Q. B. 201.

(*p*) Sea Fisheries Regulation Act, 1888, s. 6.

(*q*) *Ibid.*, s. 7.

(*r*) Sea Fisheries (Shellfish) Regulation Act, 1894, s. 1.

CHAPTER III.

REGISTRATION AND DISCIPLINE OF SEA FISHING BOATS.

THE registration and discipline of fishing boats and the men engaged therein is regulated by the Merchant Shipping Act, 1894, and is carried into effect by the Board of Trade, which body has power, if it think fit to use it, to exempt any class of fishing boats from some or all of the provisions relating to such vessels (*a*). The registration and lettering of foreign boats is regulated by the countries to which they belong, in accordance with the provisions of the conventions attached to the Sea Fisheries Acts, 1843—1891. By the Merchant Shipping Act, every fishing boat, that is, a vessel of whatever size and in whatever way propelled, which for the time being is employed in sea fishing or in the sea fishing service, including those used otherwise than for profit, must be lettered and numbered and have official papers, and be entered on the fishing boat register (*b*). This does not apply to ships engaged in the whale, seal, walrus, or Newfoundland cod fisheries, for they are deemed to be foreign-going ships, unless they belong to ports in Canada or Newfoundland and are engaged in the Newfoundland cod fisheries (*c*); but it does apply to fish carriers or tenders (*d*). By Order in Council of the 29th day of March, 1902, certain other classes of vessels have been exempted from the provisions as to registration and numbering. This order gives all the regulations now in force as to registration, lettering, and numbering of sea fishing boats (*dd*). If a fishing boat required to be entered on the register is not so entered, and is used as a fishing boat, the owner and the skipper are each liable to a fine not exceeding 20*l.*, and the boat may be detained (*e*). The tonnage of a fishing boat, for the purpose of registration as a fishing boat, is in the case of a steam trawler her gross tonnage, but in any other case her register tonnage. If she is registered under Part I. of the Merchant Shipping

a. The Board of Trade by an order, dated 2nd November, 1899, have exempted sailing trawlers under fifty tons register, and paddle-steamers engaged in trawling, from sects. 399—408 of the Act.

b. The Merchant Shipping Act, 1894, ss. 370, 373.

c. The Merchant Shipping Act, 1894, s. 744.

d. The Merchant Shipping Act, 1894, s. 369, sub-s. 4.

dd. St. R. & Orders, 1902, No. 274, *post*.

(e) The Merchant Shipping Act, 1894, s. 373 sub-s. 4.

Act, the tonnage there found is the tonnage for the fishing register. If the tonnage has not been so found, then a certificate signed by a surveyor of ships stating her tonnage, ascertained as in the case of a ship registered under Part I. of the Act, is conclusive of her tonnage (*f*). A trawler of twenty-five tons tonnage or upwards must not go to sea without a duly certificated skipper and second hand. These certificates are granted by the Board of Trade after the candidates have passed the necessary examination in that behalf (*g*). The crews of vessels of this class are engaged under an agreement according to a form sanctioned by the Board of Trade, and can only be discharged in the method set out in the Act (*h*). The provisions as to certificates and crew do not apply to vessels used otherwise than for profit (*i*).

Boys may be apprenticed to or serve in the sea fishing service, but not till they are thirteen years of age. If under the age of sixteen years, boys may not be taken to sea to serve in any capacity connected with the sea fishing service, unless they are bound by an indenture of apprenticeship made in conformity with Part IV. of the Merchant Shipping Act, 1894 (*j*).

The discipline on board a fishing boat is maintained by making certain offences punishable by fine or imprisonment, or forfeiture of wages. They are desertion, absence without leave, wrongfully quitting the boat, wilful disobedience, continued breach of duty, assault, unlawful combination, wilful damage and smuggling. A skipper can be punished for the offences of desertion, absence without leave, wrongfully quitting the boat, wilful damage and smuggling, as if he were a seaman (*k*).

By the North Sea Fisheries Act, 1893 (*l*), it has been agreed by Great Britain, Belgium, Denmark, and the Netherlands, that spirituous liquors—that is, liquids which contain more than 5 per centum of alcohol—shall not be sold to any fishermen in the North Sea outside the territorial limits of the United Kingdom. In the North Sea, and outside the exclusive fishery limits of Great Britain, provisions and other articles for their use (spirituous liquors excepted) may only be sold by persons licensed by the respective Governments. The limits of the North Sea are defined by art. 4 of the 1st schedule to the Sea Fisheries Act, 1883.

(*f*) The Merchant Shipping Act, 1894, s. 371.

(*g*) *Ibid.*, ss. 413—416.

(*h*) *Ibid.*, ss. 399—412. See note (*a*), *ante*.

(*i*) *Ibid.*, s. 370.

(*j*) *Ibid.*, ss. 392, 393 *et seq.*

(*k*) *Ibid.*, s. 376. A seaman may be convicted of wilful disobedience, though the act of disobedience amounted to desertion or absence without leave: *Edgill v. J. & G. Alward, Limited*. [1902] 2 K. B. 239.

(*l*) 56 & 57 Vict. c. 17.

Besides the provisions set out above, further regulations have been made by the Sea Fisheries Act, 1883, and by Order in Council of 6th April, 1889. As these provisions are set out hereafter, it is unnecessary to deal with them now in detail.

A fishing boat may not proceed to sea unless she is provided, according to her tonnage, with boats in accordance with the 15th schedule of the Act; and if she carries more than ten passengers, she must also have two lifebuoys and a lifeboat (*m*). She is not required, like all other vessels, to carry life-belts for each person on board of her.

The precautions to be observed and the lights to be carried for preventing collisions between fishing boats and between fishing boats and vessels navigating the sea, are contained in the Collision Regulations, which are made from time to time by Order in Council (*n*). When fishing boats are working in fleets, the Board of Trade may make regulations as to the conveyance of fish from the fishing boats to the fish-carriers (*o*).

(*m*) The Merchant Shipping Act, 1894, s. 375.

(*n*) See The Rules of the Road at Sea, 3rd ed.

(*o*) The Merchant Shipping Act, 1894, s. 417. Regulations have been made as to the Great Northern Steamship Fishing Co., Ltd., Great Grimsby Ice Co., Ltd., Grimsby and North Sea Steam Trawling Co., Hull Steam Fishing and Ice Co., Ltd., Short Blue Fleet, Hagerup, Doughty & Co., and Helsall Brothers and Beeching, Ltd.

CHAPTER IV.

STATUTORY PROVISIONS RELATING TO FISHERIES GENERALLY.

AT common law there is no right of property in fish in their natural liberty (*a*), and they become the property of their captor, even though he be a poacher; and the owner of the fishery, although he may seize the fishing implements of the captor, yet he may not take the fish he has caught (*b*). There are certain exceptions to this rule of common law. Fish taken in a trunk or net, or put in a stewpond, are the subject of property (*c*). Royal fish, *i.e.*, whales, sturgeon, and porpoise, are the property of the Crown and its grantees, whether taken at sea or on the shore, and not of the finder (*d*). Oysters and mussels and cockles, in or on a bed within the limits of a several oyster and mussel and cockle fishery, granted under the Sea Fisheries Act, 1868, are the absolute property of the grantees of such fishery. Oysters on any private oyster-bed are the property of the owner of the bed (*e*).

Although there may be no property in fish in a private fishery, yet the statute law has enacted that in certain cases a person who takes fish from a private fishery may be punished. By the Larceny Act, 1861, s. 24, it is made a misdemeanour to take or destroy fish in any water which runs through or is in any land adjoining or belonging to the dwelling-house of the owner of the water. If the fishing was by means of an angle used in the daytime, *i.e.*, between the last hour before sunrise and the first hour after sunset only, a penalty not exceeding 5*l.* is incurred. Any one who unlawfully and wilfully fishes in any water which is private property, or in which there is a private right of fishing, is liable to pay the value of the fish taken, and a sum not exceeding 5*l.*, unless it was a case of angling in the daytime, for which offence there is only a penalty not exceeding 5*l.* Besides the penalties above mentioned, a person fishing at night, and a person fishing by any other mode than by rod and line,

(*a*) *R. v. Hunsdon*, (1781) 2 East, P. C. 611.

(*b*) Larceny Act, 1861, s. 25.

(*c*) Russell on Crimes, 6th ed., Vol. II., p. 245.

(*d*) *De Prerogativa Regis*, 17 Edw. II. st. 1, c. 11; Moore on Foreshore, p. 753.

(*e*) Sea Fisheries Act, 1868, s. 51, and Sea Fisheries Act, 1884, s. 1.

may be arrested (*f*), and may have all his implements for catching fish taken from him (*g*). When the fishing is by angling in the day-time the owner of the fishery or ground on which the offender is found may, instead of prosecuting, take the implements used by the offender to catch fish, and keep them for his own use. If he adopts this course he cannot proceed against the offender in any other way (*g*). The owner of the ground or fishery may authorise his servants or anybody else to do this for him, but they can only act on the ground and fishery of their master (*h*). As the lessee of a fishery is not the owner, he cannot avail himself of this provision unless he is authorised by the owner. These provisions of the Larceny Act apply both to tidal and non-tidal waters (*i*), and to all kinds of fish, whether shellfish or floating fish (*k*).

The Larceny Act also protects the owners of oyster fisheries by making it a felony to steal oysters therefrom. It also prohibits the use of any dredge or other engine for taking oysters within the limits of an oyster fishery. Oyster-beds are not protected if not sufficiently marked out and known as such (*l*).

By the Malicious Damage Act, 1861 (*m*), it is a misdemeanour, punishable with seven years' penal servitude, to unlawfully and maliciously cut down or otherwise destroy the dam, flood-gate, or sluice of any fishpond or of any water which is private property, or in which there is any private right of fishing, with intent to take and destroy fish, or to put any lime or other noxious material into such water. This provision as to poisoning water also applies to salmon rivers (*n*).

Fisheries, both tidal and non-tidal, are also protected from pollution by the Rivers Pollution Prevention Acts, 1876 and 1893, and by the Salmon and Freshwater Fishery and other Acts, as will appear later (*o*).

By the Fisheries Dynamite Act, 1877, dynamite or other explosive substances may not be used to catch or destroy fish in a public fishery, or in any private fishery within the limits of the Freshwater Fisheries Act, 1878 (*p*).

(*f*) Larceny Act, 1861, s. 103; see also Salmon Fishery Act, 1873, s. 38.

(*g*) *Ibid.*, s. 25.

(*h*) *Hughes v. Buckland*, (1846) 15 M. & W. 346.

(*i*) *Polley v. Birch*, 1867 8 E. & S. 336; 16 L. T. 410.

(*k*) *Coggill v. Thwaiter*, (1885) 33 W. R. 581; 49 J. P. 614, where it was held that crayfish were within this Act.

(*l*) Sect. 26.

(*m*) Sect. 32.

(*n*) Salmon Fishery Act, 1873, s. 13.

(*o*) See *post*, Chap. X.

(*p*) As to whether this applies to an artificial reservoir, see *Stead v. Nicholas*, [1901] 2 K. B. 163.

CHAPTER V.

STATUTORY PROVISIONS RELATING TO FLOATING FISH.

Numerous provisions have from time to time been made to regulate the methods by which fish are caught and the conduct of the vessels engaged in fishing, when within and beyond the exclusive fishery limits of this kingdom.

Within the exclusive fishery limits the regulations now in force are contained in the Sea Fisheries Act, 1883; sections 67 and 68 of the Sea Fisheries Act, 1868; the Collision Regulations made from time to time under the Merchant Shipping Act, 1894; orders made by the Board of Trade, under the Fisheries (Oyster, Crab and Lobster) Act, 1877, and bye-laws made by local fisheries committees.

Outside the exclusive fishery limits, sea fisheries are governed by the Sea Fisheries Acts, 1843 to 1891, and by orders made by the Board of Trade under the Fisheries (Oyster, Crab and Lobster) Act, 1877. Some of these regulations apply generally to all classes of fishing boats, whilst others relate to particular methods of fishing, such as trawl, driftnet, set nets, dredges and line fishing. We will first deal with those regulations which relate generally to fishing boats.

On arriving at the fishing grounds, fishing boats must not place themselves or shoot their nets in such a way as to injure each other or as to interfere with fishermen who have already commenced to fish (*a*). If the nets of different fishermen get foul of each other, they must not be cut without the consent of both parties, unless it is impossible to disentangle them by other means (*b*). If the nets belong to English and Belgium vessels, all necessary measures for reducing to a minimum injuries which may result to the gear or to the boat of the other fishermen must be taken (*c*). Fishing boats are not allowed to anchor between sunset and sunrise on grounds where driftnet fishing is actually going on, unless it is necessary to

(*a*) Sea Fisheries Act, 1883, 1st sched., art. 15.

(*b*) Sea Fisheries Act, 1883, 1st sched., art. 20; Sea Fisheries Act, 1843, sched. art. 60.

(*c*) Fisheries Act, 1891, sched., art. 4.

do so in consequence of an accident or other compulsory circumstances (*d*). Fishermen must not make fast or hold on their boat to the nets, buoys, floats, or to any other part of the fishing tackle of another, and no fisherman may under any pretext cut, hook, or lift up nets, lines, or other gear not belonging to him, except for the purposes of salvage, or because he cannot disentangle them from his own gear by any other means (*e*). Small boats, buoys, and all other implements must be marked with the numbers of the vessels to which they belong (*f*). All fishing boats, rigging, gear, nets and fishing implements picked up at sea must be at once delivered to the proper Customs authorities, who have power, if they think right, to award salvage, but if the property salvaged belong to French subjects, and is found in the sea between the coasts of the United Kingdom and France, not more than a quarter of the value can be awarded as salvage (*g*). The presence on board and the use of any instrument or engine which serves only to cut or destroy any fishing implements is forbidden, but this provision does not apply to French vessels in the sea between the coasts of the United Kingdom and France (*h*). All fishing boats must carry and exhibit the lights set out in the Collision Regulations for the time being in force (*i*).

Driftnet Fishing.

We will now state the regulations which apply to driftnet fishing. Driftnet fishing outside the exclusive fishery limits is open all the year (*k*). Within the exclusive fishery limits, driftnet fishing may be regulated by the local fisheries committee. On the coast of Cornwall, except so much of the north coast as lies to the east of Trevoze Head, driftnet fishing is forbidden within two miles of the coast between sunrise and sunset, between 25th July and 25th November (*l*). No net or other fishing engine may be set or anchored on grounds where driftnet fishing is actually going on, nor may any fishing boat anchor on any such grounds, except in

(*d*) Sea Fisheries Act, 1883, 1st sched., art. 14; Sea Fisheries Act, 1843, sched., art. 52.

(*e*) Sea Fisheries Act, 1883, 1st sched., arts. 18 and 22; Sea Fisheries Act, 1843, sched., arts. 58 and 59.

(*f*) Sea Fisheries Act, 1883, 1st sched., art. 11; Sea Fisheries Act, 1843, sched., art. 10.

(*g*) Sea Fisheries Act, 1883, 1st sched., art. 25; Sea Fisheries Act, 1843, sched., arts. 61 and 62.

(*h*) Sea Fisheries Act, 1883, s. 5, 1st sched., art. 23.

(*i*) Sea Fisheries Act, 1883, s. 6, 1st sched., art. 24; as to French vessels in the English Channel, see Sea Fisheries Act, 1843, sched., arts. 52, 53 and 54.

(*k*) Sea Fisheries Act, 1843, sched., arts. 28 and 36.

(*l*) Sea Fisheries Act, 1868, s. 68.

consequence of an accident or other compulsory circumstances (*m*). On arriving at their fishing grounds, driftnet boats must take up their position according to whether they are decked or undecked boats. Decked boats must shoot their nets to leeward of undecked boats, and undecked boats to windward of decked boats (*n*).

When trawl fishermen are in sight of driftnet boats, they must take all necessary steps to avoid doing injury to the latter, and if damage results, the responsibility lies on the trawlers, unless they can prove they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault (*o*).

The above regulations as to driftnet fishing do not apply to French boats fishing in the sea between the coast of the United Kingdom and France. These vessels are regulated by the Sea Fisheries Act, 1843. By that Act they are forbidden to set or anchor nets or other fishing implements in any place where herring or mackerel driftnet fishing is going on (*p*). French herring boats are not to shoot their nets earlier in the day than half an hour before sunset, except in places where it is customary to carry on this mode of fishing by daylight (*q*). The rule as to the position which herring boats are to take up with regard to other vessels fishing for herrings is the same as that set out above, except that if that rule is not followed, the boat breaking it must not shoot her net nearer than half a mile from the nearest boat (*r*). French boats going to fish for mackerel with driftnets are to lower their sails when they arrive on the ground, and are to keep three-quarters of a mile at least from one another when they shoot their nets (*s*).

French driftnets for herring must not have a mesh of less than one inch (twenty-five millimètres) square from knot to knot along the line. French mackerel nets must have meshes of at least one and one-sixteenth of an inch (thirty millimètres), and must not be loaded on the lower part with lead or stones (*t*). There are no such restrictions on English boats. French driftnet boats have to carry by day a blue and white vertical vane at the mast head, which must be at least eight inches in height and two feet in length, and at night they must show two lights, one over the other, three feet apart (*u*).

(*m*) Sea Fisheries Act, 1883, 1st sched., arts. 14 and 17.

(*n*) Sea Fisheries Act, 1883, 1st sched., art. 16.

(*o*) Sea Fisheries Act, 1883, 1st sched., art. 19.

(*p*) Sea Fisheries Act, 1843, sched., arts. 35 and 57.

(*q*) Sea Fisheries Act, 1843, sched., art. 87.

(*r*) Sea Fisheries Act, 1843, sched., arts. 29, 30, 31 and 32.

(*s*) Sea Fisheries Act, 1843, sched., arts. 39 and 40.

(*t*) Sea Fisheries Act, 1843, sched., arts. 28, 37 and 38.

(*u*) Sea Fisheries Act, 1843, sched., arts. 50 and 53.

They are forbidden to anchor by night on grounds where herring or mackerel driftnet fishing is going on, except in case of accident, and if they are compelled to do so, they are to hoist two lights placed horizontally about three feet apart (*x*). The Sea Fisheries Act, 1843, by which the conduct of French boats in the English Channel is regulated, makes no provision for driftnet fishing for pilchards. This is probably because that mode of fishing has only come into existence since the passing of that Act.

Persons employed in the British white herring fisheries are entitled to the use of all harbours which are not artificially made, and may land their nets, fish casks, and other stores on any waste or uncultivated land within the space of one hundred yards from the highest high-water mark without payment of any dues (*y*).

Set Nets, Bratt Nets, Trammels.

Set nets, bratt nets, trammels and other fishing engines may not be set or anchored on grounds where driftnet fishing is taking place, or within half a mile of any sea fishing boat stationed for seine fishing on the coast of Cornwall, except on that part of the north coast to the eastward of Trevoze Head, in the daytime between the 25th July and 25th November (*z*). French subjects fishing in the seas between England and France are forbidden to set any net or fishing implement where herring or mackerel driftnet fishing is going on (*a*). French set nets for herrings must have the same size mesh as driftnets. The nets must be buoyed, and the boats engaged in this class of fishing must always remain over the nets, and the nets must be lifted at least once in every twenty-four hours (*b*). French bratt and trammel nets must be of the size and description set out in arts. 41 and 42 of the Convention of 1839 (*c*).

Trawl Fishing.

Fishing by means of a trawl may be carried on at all times of the year (*d*) except in districts where the local fisheries committee have by bye-law prohibited its use, or in the daytime between 25th July and 25th November within two miles of the coast of

(*x*) Sea Fisheries Act, 1843, sched., art. 52.

(*y*) 11 Geo. III. c. 31, s. 1.

(*z*) Sea Fisheries Act 1882, 1st sched., art. 17; Sea Fisheries Act, 1868, s. 68.

(*a*) Sea Fisheries Act, 1843, sched., arts. 35 and 57.

(*b*) *Ibid.*, arts. 28, 35, 43 and 44.

(*c*) *Ibid.*, arts. 41 and 42.

(*d*) Sea Fisheries Act, 1843, sched., art. 16.

Cornwall, except so much of the north coast as lies to the east of Trevoze Head (*e*). As a trawl is not a net adapted solely for catching floating fish, it may not be used within the limits of a several fishery made by order of the Board of Trade, or on any private oyster-bed (*f*). When fishing in sight of driftnet or long-line fishermen, trawl fishermen must take all necessary steps to avoid doing injury to the latter, but they are not forbidden to fish on the same ground as the driftnet or long-line boats, provided they keep clear of them; when damage is caused, the responsibility lies on the trawlers unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault (*g*). This provision does not apply to French trawlers fishing in the seas between the coast of the United Kingdom and France. They are forbidden to fish in all places where there are boats engaged in herring or mackerel driftnet fishing, and if they are fishing at any place when the latter commence to fish the trawlers must depart and keep at a distance of three miles at least from the driftnet boat. They must always keep at a distance of at least three miles from boats fishing for herring or mackerel with driftnets (*h*). There are no regulations to be observed by French vessels in the English Channel with regard to vessels driftnet fishing for pilchards. French vessels in the seas between the United Kingdom and France may only use trawls of certain sizes, and must by day carry at their masthead a blue vane eight inches by two feet, to distinguish them from driftnet boats (*i*). There are no such regulations imposed on British vessels outside the territorial limits.

Seine Nets.

The only general statutory provision as to seine net fishing is that which forbids it being carried on in any oyster, mussel, or cockle fishery unless it can be so done as not to disturb or injure the oysters or mussels (*k*).

By statute 1 James I. c. 23, all persons engaged in seine fishing in the counties of Somerset, Cornwall and Devon may enter any lands or tenements near their fishing places "and sit, convenient and necessary to watch and balk in, or to draw and carry the said fish on

(*e*) Sea Fisheries Act, 1868, s. 68.

(*f*) Sea Fisheries Act, 1868, s. 53.

(*g*) Sea Fisheries Act, 1883, 1st sched., art. 19.

(*h*) Sea Fisheries Act, 1843, sched., arts. 24—26.

(*i*) Sea Fisheries Act, 1843, sched., arts. 17—23 and 50.

(*k*) Sea Fisheries Act, 1868, s. 53.

shore, and there to watch for the said fish, and to balk, hue and direct and guide the fishermen which shall be upon the said sea and sea coasts for the taking of the said fish and to draw and carry the said fish on shore." Seine fishing is also further protected by the Sea Fisheries Act, 1868, s. 68. By that Act all other forms of fishing are prohibited or restricted on parts of the Cornish coast during the daytime from the 25th July to the 25th November.

Long Lines.

Long lines may not be set on any ground where driftnet fishing is going on (*l*). When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls the lines must not cut them except under stress of compulsory circumstances, in which case they must be at once joined together again (*m*). Trawlers must keep clear of long-line fishermen as in the case of driftnet fishermen (*n*). The only provision relating to French subjects in the English Channel is that which forbids them to set long lines in any place where herring or mackerel driftnet fishing is going on (*o*). Long-line fishing is forbidden during the daytime between the 25th July and the 25th November, within half a mile of any boat stationed for seine fishing on the coast of Cornwall, except that part which lies to the east of Trevoze Head (*p*).

(*l*) Sea Fisheries Act, 1883, 1st sched., art. 17.

(*m*) *Ibid.*, art. 21.

(*n*) *Ibid.*, art. 19.

(*o*) Sea Fisheries Act, 1843, sched., art. 57.

(*p*) Sea Fisheries Act, 1868, s. 68.

CHAPTER VI.

STATUTORY PROVISIONS RELATING TO SHELLFISH.

Oysters, Mussels and Cockles.

OUTSIDE the exclusive fishery limits of England and France, from a line drawn from the North Foreland to Dunkirk and from the Land's End to Ushant, British vessels may not dredge for oysters from the 16th June to the 31st August; and during that period dredges, if kept on board, must be tied up and sealed by the Customs authority (*a*). Any British subject who fishes for oysters, or has on board his boat any oyster dredge within any seas and during any time that oyster fishing is prohibited, is liable to a fine of 50*l.* or imprisonment not exceeding three months (*b*). In the seas lying between the United Kingdom and France, French subjects when dredging for oysters must throw back all oysters of less than two and a half inches in the greatest diameter of the shell, and all sand, gravel and fragments of shells must be thrown back on to the oyster ground. They are also forbidden to dredge at night time or to throw on to the oyster ground anything which is detrimental to the fishery (*c*).

By the Sea Fisheries Act, 1868 (*d*), power is given to the Board of Trade to make orders for establishing or improving, and for maintaining and regulating oyster, mussel and cockle (*e*) fisheries on the shore and bed of the sea, or of any estuary or tidal river. The procedure by which these orders are obtained is set out in sects. 30—39 of the Sea Fisheries Act, 1868, and sect. 7 of the Fisheries (Oyster, Crab and Lobster) Act, 1877. These orders are not to interfere with any right of several fishery, or any right on, to, or over any portion of the sea shore which is enjoyed by any person under any lawful title (*f*).

When the order confers a right of several fishery, the grantees of the order have the exclusive right of fishing for the class of fish

(*a*) Sea Fisheries Act, 1868, s. 12 (*a*), sched., art. 11.

(*b*) Sea Fisheries Act, 1883, s. 4 (*c*).

(*c*) Sea Fisheries Act, 1843, sched., arts. 47, 48 and 49.

(*d*) Sect. 29.

(*e*) The power as to cockles is given by the Sea Fisheries Act, 1884.

(*f*) The Sea Fisheries Act, 1868, s. 48.

mentioned in the order (*g*). When the right of regulating the fishery only has been conferred, the body to whom the right is granted have power (1) to carry into effect and enforce all restrictions and regulations specified in the order, (2) to levy tolls and royalties, and (3) to provide for depositing and propagating the fish mentioned in the order, and for improving and cultivating the fishery (*h*). If any person dredges or takes fish in contravention of the regulations or without paying the proper toll or royalty, he is liable to a penalty of 20*l.* and to forfeit the fish taken or to pay their value (*i*).

These orders of the Board of Trade are only to be in force for sixty years, when they will have to be renewed (*k*). They may, however, be determined at an earlier date if the Board of Trade are of opinion that the grantees have not properly cultivated the fishery or carried into effect the restrictions and regulations imposed by the Board of Trade (*l*).

Besides this power to create orders for the cultivation of oysters, the Board of Trade can prohibit for a period not exceeding one year the removal of oysters from any oyster-bed on which the public have the right to fish, whether within or without the exclusive fishery limits of England and Wales, and which is not within the jurisdiction of the inspectors of Irish fisheries (*m*).

By the Sea Fisheries Regulation Act, 1888, and its amending Act of 1894, a local fisheries committee may make bye-laws for constituting within their district any district of oyster cultivation for the purposes of sect. 4 of the Fisheries (Oyster, Crab and Lobster) Act, 1877; for fixing the sizes and condition at which shellfish may not be removed; for the obligation to re-deposit in specified localities any shellfish the removal or possession of which is illegal; for the protection of shellfish laid down for breeding purposes; for the protection of culch. A local fisheries committee have power to stock or re-stock any public fishery for shellfish (*n*). They may also enforce the provisions of the Fisheries (Oyster, Crab and Lobster) Act, 1877, or any Act relating to sea fisheries (*o*).

There is a close season, during which it is illegal to sell oysters. That for deep-sea oysters is from the 15th June to the 4th August, and for all other kinds from the 14th May to the 4th August. This does

(*g*) The Sea Fisheries Act, 1868, s. 10.

(*h*) *Ibid.*, s. 41.

(*i*) *Ibid.*, s. 41.

(*k*) *Ibid.*, s. 44.

(*l*) *Ibid.*, s. 45; Fisheries (Oyster, Crab and Lobster) Act, 1877, s. 7.

(*m*) Fisheries (Oyster, Crab and Lobster) Act, 1877, ss. 3 and 13.

(*n*) Sea Fisheries (Shellfish) Regulation Act, 1894, s. 1, sub-s. 2.

(*o*) Fisheries Act, 1891, s. 9.

not apply to oysters taken within the waters of some foreign State, even though they are re-laid in English waters, where they do not breed (*p*). British subjects may not dredge for deep-sea oysters in the English Channel between the 16th June and the 31st August (*q*), and French subjects between the 1st May and the 31st August (*r*).

By the Sea Fisheries Act, 1868, it is forbidden within the limits of a several fishery created under that Act, or of a private oyster bed, to knowingly use any instrument of fishing except a line and hook or a net adapted solely to catching floating fish; to dredge for any ballast or other substance, except under a lawful authority for improving the navigation; to deposit ballast or other substance; to place anything prejudicial to the bed except for a lawful purpose of navigation or anchorage (*s*). These provisions do not apply if the fishery is not properly marked out. How this is to be done is stated in the order creating the several fishery; but as to a private oyster bed, the Act only requires them to be *sufficiently marked out and known as such* (*t*). The interpretation of this instruction must depend on the facts of each case.

The Board of Trade has the same powers to make orders as to mussels and cockles as it has to make oyster orders.

Crabs, Lobsters, &c.

No one may have in their possession or sell any edible crab which measures less than four and a quarter inches across the broadest part of the back, or which has any spawn attached to it, or which has recently cast its shell, unless it was intended for bait for fishing (*u*); and no one may have in his possession any lobster which measures less than eight inches from the tip of the beak to the end of the tail (*x*). The Board of Trade may prohibit or restrict the taking of lobsters and crabs in any area, whether within or without the exclusive fishery limits, which is not within a several right of fishing, or within the area of the jurisdiction of the inspectors of Irish fisheries (*y*). Within a sea fisheries district bye-laws may be

(*p*) Fisheries (Oyster, Crab and Lobster) Act, 1877, s. 4, and *Robertson v. Johnson*, [1893] 1 Q. B. 129.

(*q*) Sea Fisheries Act, 1868, s. 12, and Sea Fisheries Act, 1853, s. 4.

(*r*) Sea Fisheries Act, 1843, art. 45.

(*s*) Sea Fisheries Act, 1868, s. 53. See *The Octavia Stella*, (1887) 6 Asp. M. C. 182; *The Swift*, [1901] P. 108; *Mayor of Colchester v. Brooks*, (1845) 7 Q. B. 339; *Att.-Gen. v. W'rcourt*, [1897] 2 Q. B. 318; and *ante*, p. 90.

(*t*) *Ibid.*, s. 54.

(*u*) Fisheries (Oyster, Crab and Lobster) Act, 1877, s. 8.

(*x*) *Ibid.*, s. 9.

(*y*) *Ibid.*, s. 10.

made to prohibit the taking of these fish, and to repeal or amend any order made by the Board of Trade under sect. 10 (z), or for directing that the proviso to sect. 8 of the Fisheries (Oyster, Crab and Lobster) Act, 1877, shall not apply.

Lobsters of British taking and imported in British ships may be landed on any day and at any time of the day without report or entry at the Custom House (a).

With regard to all molluscs and crustaceans other than those mentioned above, the only provisions that can be made as to them are those which a local fisheries committee are empowered by the Sea Fisheries Regulation Act, 1888, s. 2 (a) and (e), and the Sea Fisheries (Shellfish) Regulation Act, 1894, s. 1 (1) (2), to make by bye-law.

(z) Sea Fisheries (Shellfish) Regulation Act, 1894, and Sea Fisheries Regulation Act, 1888, s. 2, sub-ss. (c) and (d).

(a) Customs and Inland Revenue Act, 1881, s. 9.

CHAPTER VII.

REGULATION OF SALMON AND FRESHWATER FISHERIES.

THE general supervision of salmon and freshwater fisheries is entrusted to the Board of Trade by the Salmon and Freshwater Fisheries Act, 1886. Before that Act it was entrusted to the Home Office.

The chief duties of the Board of Trade with regard to salmon and freshwater fisheries are to form the various fishery districts and salmon rivers, and to alter and combine them if required; to sanction the various acts of the different boards of conservators appointed under the Salmon and Freshwater Fisheries Acts, and to see that the various provisions of the statutes relating to salmon and freshwater fisheries are complied with. For this purpose the Board of Trade appoints inspectors who annually report to Parliament a statistical account of the fisheries, with such other information as may be collected, and suggestions offered for the regulation and improvement of the fisheries (*a*).

Under the supervision of the Board of Trade, many of the salmon and freshwater rivers are controlled by boards of conservators. These boards may be either for waters frequented by salmon, trout and char, or freshwater fish. Boards for waters frequented by salmon are created by the provisions of the Salmon Fishery Acts, 1865 to 1873, and the two other classes of boards are created by the Freshwater Fisheries Act, 1878, and Freshwater Fisheries Act, 1884. Before 1888 the inception of boards of conservators was in the custody of the justices of the peace for the county. Since the passing of the Local Government Act, 1888 (*b*), the powers of the justices of the peace as regards all fishery matters have been transferred to the county councils.

The method by which a fishery district and a board of conservators is now brought into existence is as follows: The county council petitions the Board of Trade to form into a fishery district all or any of the rivers lying wholly or partly in their county (*c*). The

(*a*) Salmon Fishery Act, 1861, s. 32.

(*b*) Sect. 3, sub-s. xiii.

(*c*) Salmon Fishery Act, 1865, s. 4.

Board defines the district and may make it of larger extent than the petition desires, and may make it extend into other counties (*d*). If the district lies wholly within one county, the county council appoints a board of conservators, and names the time and place for the first meeting (*e*).

When the fishery district extends into different counties, the county councils of the various counties affected each appoint a committee of three of their members, who form a joint fishery committee (*f*). The duty of this joint committee is to appoint the board of conservators for the whole district (*g*). They settle the number of conservators to be appointed to the board; the number to be appointed by each county; who are to be the first members; the time and place of the first meeting, and the quarter sessions by which the accounts are to be audited (*h*). On the completion of their duties as to the formation of the conservancy board the joint committee is dissolved (*i*).

The members of the board of conservators hold office for one year, and are eligible for re-appointment. The Board of Trade can alter the number of conservators to be annually appointed (*k*). In addition to the elected members there are certain *ex officio* and representative members (*l*), *e.g.* :—

(1) The owner or occupier of a fishery which is assessed to the poor rate at 30*l.* a year.

(2) The owner of lands of an annual value of not less than 100*l.*, and having a frontage of not less than one mile, and having the right to fish in the water adjoining, and having paid salmon license duty for the preceding year.

(3) In the case of public or common fisheries, fishermen duly licensed to fish otherwise than with rod and line, who have taken out licenses during the preceding season, may elect one member for every 50*l.*, or part thereof, of license duty paid.

The method by which the voting for the election of these additional members is conducted is set out in sects. 30—33 of the Salmon Fishery Act, 1873.

The board of conservators is a body corporate having perpetual succession, and can make contracts and sue and be sued in a

(*d*) *R. v. Sir George Grey*, (1866) L. R. 1 Q. B. 469.

(*e*) Salmon Fishery Act, 1865, s. 6.

(*f*) *Ibid.*, s. 7.

(*g*) *Ibid.*, s. 8.

(*h*) *Ibid.*, s. 12.

(*i*) *Ibid.*, s. 13.

(*k*) Salmon Fishery Act, 1873, s. 9; *Ibid.*, s. 15.

(*l*) Salmon Fishery Act, 1873, ss. 26—29.

common name (*m*), and has power to appoint committees, and to fill up any casual vacancies occurring (*n*).

Boards of conservators for districts for trout and char and freshwater fish are appointed in the same way as conservators for a district for salmon (*o*).

(*m*) Salmon Fishery Act, 1865, s. 21.

(*n*) Salmon Fishery Act, 1865, ss. 15 and 23.

(*o*) Freshwater Fisheries Act, 1878, s. 6 ; Freshwater Fisheries Act, 1884, s. 2.

CHAPTER VIII.

POWERS OF BOARDS OF CONSERVATORS.

I.—Where Appointed under the Salmon Fishery Acts, 1865 and 1873.

A BOARD of conservators appointed under the Salmon Fishery Acts of 1865 and 1873 have power within their districts to do the following:—

1. To appoint water bailiffs and other officers, and to assign to them their duties and salaries (*a*).

2. To issue such licenses for fishing as are provided by sects. 33 and 34 of the Salmon Fishery Act, 1865 (*b*).

3. To purchase by agreement, for the purpose only of removal, dams, fishing weirs, fishing mill-dams, or fixed engines, that it is expedient to remove for the benefit of the fisheries in their district (*c*).

4. To take legal proceedings against persons violating the provisions of the Salmon Fishery Acts, 1861 and 1865, or for the removal of such weirs or other fixed engines as they may be advised are illegal (*d*).

5. Generally to execute such works, do such acts and incur such expenses as are expedient for the protection and improvement of the salmon fisheries, the increase of salmon and the stocking of waters therewith. Provided that the exercise of the above powers (1 to 5) does not injuriously affect any navigable river, canal, or inland water (*e*).

6. With the consent of the Board of Trade to mortgage the license duties (*f*).

7. To report to the Board of Trade that any fish-pass or free gap in their district is capable of improvement, and to pay for the cost of altering it, if the Board so orders (*g*).

(*a*) The Salmon Fishery Act, 1865, s. 27 (i.).

(*b*) *Ibid.*, s. 27 (ii.).

(*c*) *Ibid.*, s. 27 (iii.).

(*d*) *Ibid.*, s. 27 (iv.).

(*e*) *Ibid.*, s. 27 (v.).

(*f*) *Ibid.*, s. 28.

(*g*) *Ibid.*, s. 32.

8. To apply to the Board of Trade to alter districts (*h*).

9. To grant licenses in accordance with the provisions of sect. 21 of the Salmon Fishery Act, 1873.

10. To expend moneys in their hands in any manner—not being illegal—they may think most conducive to the improvement of the salmon fisheries (*i*).

11. With approval of the Board of Trade to vary license duties (*k*).

12. To make bye-laws to the following purposes for the better execution of the Salmon Fishery Acts, 1861 to 1873 (*l*):—(a) To alter the annual and weekly close seasons for salmon; (b) to make bye-laws regulating the size of nets for salmon, not being fixed engines; (c) to determine the minimum size of nets for catching salmon; (d) to determine the rate and form of licenses; (e) the marking of nets and boats, &c.; (f) to prohibit the use of nets in certain localities; (g) to determine when the gaff may be used in connection with rod and line; (h) to regulate the use of gratings; (i) to regulate during the annual and weekly close seasons the use of nets for fish other than salmon. This power only extends to regulating or prohibiting the use of nets prejudicial to the salmon fisheries. The board have no power to absolutely prohibit the use of every net without regard to the question whether the use of such net was prejudicial or not (*m*). (j) To prohibit the use in inland waters of any net, except a landing-net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise (*n*).

13. To petition in certain events the Board of Trade for powers to compulsorily acquire a weir or obstruction, the removal of which will benefit the fishery (*o*).

14. To acquire riparian land (*p*), and to remove ancient weirs in certain cases (*q*).

15. To levy additional duties for permanent improvements (*r*).

16. To make orders as to gratings (*s*).

17. To alter the period during which it is illegal to take or kill trout or char (*t*).

(*h*) Salmon Fishery Act, 1873, s. 5.

(*i*) *Ibid.*, s. 23.

(*k*) *Ibid.*, s. 25.

(*l*) *Ibid.*, s. 39. A summary of many of the bye-laws is set out in the annual report of the Inspectors of Fisheries.

(*m*) *Pidder v. Barry*, (1888) 59 L. T. 23; *Hood v. Venton*, (1890) 54 J. P. 662.

(*n*) Salmon Fishery Act, 1873, s. 39, sub-s. 12.

(*o*) *Ibid.*, s. 49.

(*p*) *Ibid.*, s. 50.

(*q*) *Ibid.*, s. 51.

(*r*) *Ibid.*, s. 57.

(*s*) *Ibid.*, ss. 58, 60.

(*t*) Salmon Fishery Act, 1876, s. 4; Freshwater Fisheries Act, 1878, s. 10.

18. To issue licenses for trout and char (*u*).

19. With the consent of the Board of Trade to exempt the whole or any part of their district from the operation of sub-sects. i., ii., iii. of sect. 11 of the Freshwater Fisheries Act, 1878.

20. To make bye-laws as to the size of nets for catching freshwater fish, and to prohibit the use of any mode or instrument of fishing for freshwater fish when such appears to be prejudicial to the fisheries; but such bye-laws are not to apply to fixed nets for taking eels or to a landing-net used as auxiliary to angling (*x*).

II.—*Where Appointed under the Freshwater Fisheries Act, 1878.*

The Freshwater Fisheries Act, 1878, s. 6, provides for the formation of boards of conservators and fishery districts for waters frequented by trout and char. These boards have all the powers of a board formed under the Salmon Fishery Acts, 1865 and 1873.

III.—*Where Appointed under the Freshwater Fisheries Act, 1884.*

The Freshwater Fisheries Act, 1884, provides for the appointment of conservancy boards for waters frequented by any fish living permanently or temporarily in fresh water, exclusive of salmon. They are to be appointed according to the provisions of the Salmon Fishery Acts, 1865 and 1873, and are to have the powers conferred by the 27th section of the Salmon Fishery Act, 1865, as though the words "freshwater fish" were therein substituted for "salmon." They have also the powers conferred on conservators by the Salmon Fishery Act, 1876, and the Freshwater Fisheries Act, 1884 (*z*).

(*u*) Freshwater Fisheries Act, 1878, s. 7.

(*x*) Freshwater Fisheries Act, 1884, s. 1.

(*z*) The Freshwater Fisheries Act, 1884, ss. 1, 2.

CHAPTER IX.

WATER BAILIFFS.

A WATER bailiff to a board of conservators is appointed by writing under the hand of the acting chairman for the time being (*a*). Before he can do any act as a water bailiff, he must produce the instrument of his appointment and offer it for inspection, but he is not bound to read it (*b*). A bailiff appointed under the Salmon Fishery Acts, 1861 to 1873, or the Freshwater Fisheries Acts, 1878 and 1884, may within the limits of his district—(1) examine any weir, dam, fishing weir, fishing mill-dam, fixed engine, or obstruction, or any artificial watercourse connected with any salmon river or waters frequented by freshwater fish; (2) stop and search on any salmon river or waters frequented by freshwater fish any vessel used in fishing, or which there is reasonable cause to suspect contains salmon or freshwater fish, and seize any fish, instrument of fishing, or other articles forfeited by the Salmon Fishery Acts, 1861 to 1873, or the Freshwater Fisheries Acts, 1878 and 1884; (3) search and examine all nets or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having fish illegally caught, and seize the fish and articles; (4) he has all the powers and privileges of a constable; (5) he may seize and apprehend without warrant any person at night illegally taking or killing salmon or freshwater fish, or who is found on or near any salmon river or waters frequented by freshwater fish with intent illegally to take or kill such fish, or having in his possession any instrument prohibited by the Salmon Fishery Acts, 1861 to 1873, or the Freshwater Fisheries Acts, 1878 and 1884 (*c*).

If a water bailiff suspects that acts in contravention of the Salmon Fishery Acts, 1861 and 1865, or the Freshwater Fisheries Act, 1878 and 1884, are being, or are likely to be done, on any land situate on or near a salmon river or waters frequented by freshwater fish, he may obtain an order from a justice of the peace to remain on such land

(*a*) Salmon Fishery Act, 1865, s. 27.

(*b*) *Barnacott v. Passmore*, (1887) 19 Q. B. D. 75; *Cowler v. Jones*, (1890) 54 J. P. 660; Salmon Fishery Act, 1873, s. 36 (5).

(*c*) Salmon Fishery Act, 1873, ss. 36, 38; Freshwater Fisheries Act, 1884, s. 3.

for a period not exceeding twenty-four hours for the purpose of detecting the persons guilty (*d*). The justices appear to have no power to grant a like order for breaches of the Salmon Fishery Act, 1873. Under a special order from a board of conservators a water bailiff may at all reasonable times enter upon and traverse any lands, not being a dwelling-house or the curtilage thereof, adjoining or near to any salmon river or waters frequented by freshwater fish, not being a decoy pond or lands used exclusively for the preservation of wild fowl, for the purpose of preventing any breach of the Salmon Fishery Acts, 1861 to 1873, or the Freshwater Fisheries Acts, 1878 and 1884 (*e*). Such an order is only in force for two months.

Justices of the peace may grant warrants enabling certain persons, including a water bailiff, to enter places for the purpose of detecting breaches of the provisions of the Salmon Fishery Act, 1861, or of the Freshwater Fisheries Act, 1878; such an order remains in force for one week (*f*).

Owners of private fisheries may appoint water bailiffs, but they cannot do any acts which might not be done by any other servant of the owner. They may, however, be authorised to demand and take implements used for taking fish by poachers (*g*), but they can never act outside their owner's property, and must, before acting, make a reasonable demand and use no more force than is necessary (*h*).

d Salmon Fishery Act, 1865, s. 31; Freshwater Fisheries Act, 1884, s. 3.

e Salmon Fishery Act, 1873, s. 37; Freshwater Fisheries Act, 1884, s. 3.

f Salmon Fishery Act, 1861, s. 34; Freshwater Fisheries Act, 1878, s. 9.

g Larceny Act, 1861, ss. 25, 103.

h *Hughes v. Buckland*, 1846 15 M. & W. 346.

CHAPTER X.

STATUTORY PROVISIONS AS TO THE CAPTURE AND DESTRUCTION OF SALMON AND FRESHWATER FISH.

BESIDES the bye-laws which may be made by boards of conservators to prohibit the capture of fish, there are also certain statutory provisions, which render certain methods of capture or destruction of fish unlawful, or which limit the use of certain fishing implements. An attempt is here made to set them out under the following headings:—

EXPLOSIVES.—It is illegal to use dynamite or other explosive substance to catch or destroy fish in a public fishery within the United Kingdom, or in a public or private fishery within the limits of the Freshwater Fisheries Act, 1878 (*a*).

POLLUTION AND POISON.—No one may unlawfully or maliciously put any lime or other noxious material into any pond or water in which there is any private right of fishery, or into any salmon river with intent to destroy the fish that may be there (*b*). No one shall cause or knowingly permit to flow or put or knowingly permit to be put any liquid or solid matter into any water containing salmon, or any tributaries thereof, whether containing salmon or not, to such an extent as to poison or kill fish (*c*). It is not necessary to prove that fish were actually killed, when prosecuting for an offence against this provision, but only that a sufficient quantity as might be reasonably calculated to kill was put into the water or its tributary (*d*). This provision as to pollution does not apply to any act done in exercise of a legal right, provided it is shown that the best practicable means, within a reasonable cost, have been used to render the obnoxious matter harmless (*e*). In waters frequented by any fish living permanently or temporarily in fresh water,

(*a*) Fisheries (Dynamite) Act, 1877, s. 2; Freshwater Fisheries Act, 1878, s. 12.

(*b*) Malicious Damage Act, 1861, s. 32; Salmon Fishery Act, 1873, s. 13. For definition of salmon river, see *post*, Salmon Fishery Act, 1865, s. 3, and cases there cited.

(*c*) Salmon Fishery Act, 1861, s. 5

(*d*) Cf. *Reg. v. Bradford*, (1860) 24 J. P. 374.

(*e*) Salmon Fishery Act, 1861, s. 5; as to the method by which reasonable cost is to be determined, see sects. 6 and 7.

exclusive of salmon, lime poison or other noxious material may not be introduced with intent to destroy fish (*f*).

The above provisions are all directed to the protection of fish. There are, however, numerous provisions for preventing the fouling of water which may contain fish, such as the Rivers Pollution Prevention Acts, 1876 and 1893, the Waterworks Clauses Act, 1847, the Gas Works Clauses Act, 1847, the Public Health Act, 1875, and the Land Drainage Act, 1861.

A local sea fisheries committee have incidentally power to prevent the pollution of waters frequented by salmon, as they can make bye-laws prohibiting or regulating the deposit or discharge of any solid or liquid substance detrimental to sea fish or sea fishing. This power is, however, subject to the qualification that it shall not affect any power of a sanitary or local authority to discharge sewage in pursuance of any general or local Act of Parliament (*ff*).

LIGHTS, SPEARS, ROE, &c.—No one may use any light, otter, lath or jack, wire or snare, spear, gaff, strokehall, snatch, or other like instrument for the purpose of catching or killing salmon, and no one may possess any of the above things unless he can show that he did not intend to catch or kill salmon (*g*).

Otter, lath or jack mean and include any small boat or vessel, board or stick used for the purpose of running out artificial or other baits or otherwise across any portion of a lake or river, whether used with a hand-line or as auxiliary to a rod and line, or in any other way. Strokehall or snatch mean and include any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul-hooking any fish (*h*). A net with an illegally small mesh is not a like instrument to a snare (*i*). A gaff may be used as an auxiliary to angling with a rod and line, provided its use is not prohibited by any local bye-law (*k*).

Roe.—The roe of any species of fish may not be used for the purpose of fishing, and it is illegal to possess salmon roe or to sell or expose it for sale, unless for the purpose of artificial propagation or other scientific purposes (*l*). In districts which are subject to a board of conservators, a person may not possess salmon roe without the written consent of the board (*m*).

(*f*) Freshwater Fisheries Act, 1884, s. 7.

(*ff*) Sea Fisheries Regulation Act, 1888, ss. 2, 13.

(*g*) Salmon Fishery Act, 1861, s. 8; Salmon Fishery Act, 1873, s. 18.

(*h*) Salmon Fishery Act, 1873, s. 4.

(*i*) *Jones v. Davies*, [1898] 1 Q. B. 405.

(*k*) Salmon Fishery Act, 1861, s. 8; Salmon Fishery Act, 1873, s. 39, sub-s. 9.

(*l*) Salmon Fishery Act, 1861, s. 9.

(*m*) Salmon Fishery Act, 1865, s. 60.

Originally the above provisions as to light, spears, roc, &c., only applied to salmon in a salmon river, but they have now been extended to trout in a salmon river in districts subject to boards of conservators appointed under the Salmon Fishery Act, 1865, and to trout and char in all waters within the limits of the Freshwater Fisheries Act, 1878 (*n*).

NETS.—Nets for the purpose of catching salmon must not have a mesh of less dimensions than two inches from knot to knot, or eight inches when measured round each mesh when wet, and no artifice may be used to make the meshes smaller (*o*). Boards of conservators have power by bye-law to vary the size of mesh so that it be not less than one and a half inches or more than two and a half inches (*p*). The only restrictions on the length, size and description of nets that may be used for catching salmon are those which a board of conservators can make by bye-law under sect. 39 of the Salmon Fishery Act, 1873.

Seine and draft nets which reach more than three-fourths of the way across a river may not be shot for salmon within one hundred yards of the line of shot of any other seine or draft net already shot or being worked, until such net is fully drawn in and landed (*q*). Nets may not be used during the close seasons, and if used during the annual close season, are on conviction forfeited, and may be destroyed or sold; and if sold the proceeds go to the conservators of the district (*r*).

It is provided by the Salmon Fishery Act, 1861, s. 12, that net fishing for salmon shall not take place in the head or tail race of any mill, or within fifty yards below any dam, unless the mill or dam has an approved fish-pass attached to it, and which has constantly running through it such a flow of water as will enable salmon to pass up or down, and nets so used may be forfeited. By the Salmon Fishery Act, 1873, s. 17, it is forbidden to fish with a net for salmon within fifty yards above or one hundred yards below any weir (*s*), dam or artificial obstruction which hinders or retards the passage of salmon, or in any water under or appurtenant to any mill, or in the head race or tail race, or waste race, or pool communicating with such mill race, or in any artificial channel

(*n*) Sect. 5, and Salmon Fishery Act, 1865, s. 64.

(*o*) Salmon Fishery Act, 1861, s. 10.

(*p*) Salmon Fishery Act, 1873, s. 39, sub-s. 4.

(*q*) *Ibid.*, s. 14.

(*r*) Salmon Fishery Act, 1865, s. 58.

(*s*) It would seem that the weirs here referred to do not mean fishing weirs, but fishing mill-dams; because the proviso in the section refers to fish-passes, which are an adjunct of fishing mill-dams, and not of fishing weirs.

connected with such weir or obstruction. This provision does not apply to certain legal fishing mill-dams, or to weirs or other obstructions which have attached to them a legal fish-pass; and then only if the conservators of the district have compensated the persons entitled to fish for their right of fishing.

The only provisions as to nets for catching fish, other than salmon, are those which enable a board of conservators to determine the length, size and description of net to be used in their district to catch fish living permanently or temporarily in fresh water, exclusive of salmon; but this power does not extend to fixed nets for taking eels, or to a landing-net used as an auxiliary to angling (*t*). Boards of conservators may prohibit the use of nets altogether within a certain distance of the mouth of a river, or of the point of confluence of rivers (not being a several fishery), or in any inland water the use of any net, except a landing-net, or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise (*u*).

The prohibition of net-fishing for a special class of fish does not prevent fishing for other classes of fish with a net not particularly adapted for catching the protected fish, and not used with that intent. In such a case, the intention is to be gathered from the facts and the conduct of the person using such a net (*v*).

ROD AND LINE.—The reference to rod and line in the Salmon Fishery Acts, 1861 to 1873, means a single rod and line (*x*). In connection with this method of fishing, it is illegal to use any otter, lath or jack, strokehall or snatch (*y*). During the annual close season for rod and line for salmon, and during the close season for trout and char, the use of a rod and line is forbidden (*z*). In waters frequented by freshwater fish, a rod and line may not be used for catching eels or other freshwater fish during the close season from 15th March to 15th June, except by the owner, or with the leave of the owner of a several fishery, or in a public fishery with the consent of a board of conservators (*a*).

In districts subject to a board of conservators, a license must be obtained before a rod and line may be used for fishing (*b*); and it

(*t*) Freshwater Fisheries Act, 1884, s. 1.

(*u*) Salmon Fishery Act, 1873, s. 39, sub-ss. 8, 12.

(*v*) *Watts v. Lucas*, (1871) L. R. 6 Q. B. 226; *Short v. Bastard*, (1881) 46 J. P. 580; *Daries v. Evans*, The Times, Feb. 22nd, 1902; and 41st Report of Inspectors of Salmon Fisheries, p. 63.

(*x*) Salmon Fishery Act, 1873, s. 4. See *Cambridge v. Harrison*, (1895) 72 L. T. 592.

(*y*) Salmon Fishery Act, 1861, s. 8; Salmon Fishery Act, 1873, s. 4.

(*z*) Salmon Fishery Act, 1861, s. 17; Salmon Fishery Act, 1865, s. 64.

(*a*) Freshwater Fisheries Act, 1878, s. 11; Freshwater Fisheries Act, 1886, s. 1. For exemptions to this provision see Reports of Inspectors of Salmon Fisheries.

(*b*) Salmon Fishery Act, 1865, s. 35; *Ibid.*, s. 15.

must not be used to catch the young of salmon. No one may so use a rod and line near any weir or obstruction in such a manner or such a place as to wilfully scare or hinder salmon from passing through any fish-pass, or over any part of such weir or obstruction usually available to salmon for the purposes of a passage (*c*).

WEIRS, DAMS, FISHING WEIRS, FISHING MILL-DAMS, FIXED ENGINES.—Before 1861 there had been numerous statutes dealing with the erection of weirs and other fixed engines of fishing, commencing with *Magna Charta*, c. 26. All these statutes, with the exception of *Magna Charta*, c. 26, were repealed by the Salmon Fishery Act, 1861, which, with the subsequent Acts, has made fresh regulations on this subject. It appears, therefore, that at the present time no weirs for catching salmon can be erected in any waters of the kingdom. Weirs for catching all other forms of fish may be erected on the sea coast with the consent of the Board of Trade, and in non-navigable waters, because Chapter 26 of *Magna Charta* only applies to weirs in navigable waters (*d*).

The term “weir” is frequently used throughout the Salmon Fishery Acts, but no exact definition of it is given, and its meaning can only be gathered from the context of the sections in which this term is used. It appears from the context of such sections that it may mean a dam, fishing weir, fishing mill-dam, or a fixed engine. These latter terms have been defined as follows:—

“Dam” means all weirs and other fixed obstructions used for the purpose of damming up water (*e*). “Fishing weir” means any erection, structure or obstruction fixed to the soil, either temporarily or permanently across, or partly across, a river or branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish (*f*). “Fishing mill-dam” means a dam used, or intended to be used, for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes (*g*). “Fixed engine” means any net, *i.e.*, stake nets, bag nets, putts, putchers, or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a fishing weir or fishing mill-dam (*h*); and any net placed or suspended in any inland or tidal waters unattended by the owner, or any person duly authorised by the owner to use the same for catching

(*c*) Salmon Fishery Act, 1873, ss. 16, 17; Salmon Fishery Act, 1861, ss. 23, 28 (4).

(*d*) *Leconfield v. Lonsdale*, (1870) L. R. 5 C. P. 57.

(*e*) Salmon Fishery Act, 1861, s. 1. See *Garnett v. Bockhouse*, (1868) L. R. 3 Q. B. 30.

(*f*) Salmon Fishery Act, 1873, s. 4.

(*g*) *Ibid.*, 1861, s. 4.

(*h*) *Ibid.*, 1861, s. 4; *Ibid.*, 1865, s. 39; *Ibid.*, 1873, s. 4.

salmon; and all engines, devices, machines, or contrivances, whether floating or otherwise, for placing or suspending such nets or maintaining them in working order, or making them stationary. The temporary fixing of a net to the soil by an anchor or pole brings it within this definition (*i*).

By the Salmon Fishery Act, 1861, s. 12, it was enacted that only such fishing weirs and fishing mill-dams as were lawfully in use at the time of the passing of the Act by virtue of a grant or charter or immemorial usage, were to be used for the purpose of catching or facilitating the catching of salmon.

In 1865 Commissioners were appointed to see that this provision was carried out. They held inquiries all over the kingdom, and caused to be removed such fishing weirs, and rendered incapable of catching fish such fishing mill-dams as did not comply with this provision (*k*).

With regard to fishing weirs, the Salmon Fishery Act, 1861, s. 12, provided that those fishing weirs which were legal were to have in them a free gap which must be maintained by the owner. Weirs that extend more than half-way across any stream at its lowest state of water must have the free gap in the deepest part of the stream between the points where it is intercepted by the weir. The sides of the gap must be in a line with and parallel to the direction of the stream, and the bottom of the gap level with the natural bed of the stream, and the gap must be not less than one-tenth the width of the stream; but it need never be more than forty feet wide, and must never be less than three feet (*l*). The Act also provides for the construction of cribs, boxes, and spur walls to such weirs (*m*). The free gaps in fishing weirs must not be obstructed in any way, nor may the fish be scared or prevented in any way from freely passing through at all periods of the year. A temporary bridge may, however, be used to cross the gap provided it is immediately removed when a person has crossed it (*n*).

By direction of the Board of Trade for the improvement of the fishery a free gap may be altered or a new one made, at the expense of a board of conservators (*o*). In some cases the entire fishing weir may be removed, but compensation must be made to the owner (*p*). In districts subject to boards of conservators in which

(*i*) *Olding v. Wild*, (1866) 14 L. T. 402; *Thomas v. Jones*, (1864) 5 B. & S. 916.

(*k*) Salmon Fishery Act, 1865, s. 12.

(*l*) Salmon Fishery Act, 1861, s. 27.

(*m*) Salmon Fishery Act, 1861, ss. 29, 30.

(*n*) Salmon Fishery Act, 1861, s. 28.

(*o*) Salmon Fishery Act, 1865, s. 32.

(*p*) Salmon Fishery Act, 1873, s. 49.

licenses are payable, fishing weirs and fishing mill-dams may not be used unless a license has been obtained for them (*q*).

A fishing mill-dam must not now be used to catch salmon unless it has attached to it a fish-pass approved by the Board of Trade. For the improvement of the fishery the fish-pass may be altered or remade at the expense of a board of conservators, or it may be compulsorily acquired by that board (*r*). A dam which is built solely for milling purposes, and without any contrivance for catching fish, is not a fishing mill-dam, though it may render their capture more easy, and it must not be used for that purpose (*s*). The owners of a dam in existence in 1861, and which is solely used for the purpose of holding up water, are not bound by the Salmon Fishery Acts to make a fish-pass thereto; but the proprietor of the fishery or a board of conservators may, with the consent of the Board of Trade, attach a fish-pass, provided it does no injury to the milling power, or to the supply of water to or of any navigable river, canal, or inland navigation. They must do it at their own expense, and must make compensation for any injury done to the dam (*t*). When a fish-pass has been attached, no one may do any act for the purpose of preventing the passage of salmon through the pass or for taking any salmon in its passage. In waters where salmon are found no one may construct a new dam or raise or alter one so as to create increased obstruction to fish without attaching and maintaining in an efficient state a fish-pass, unless the fish-pass would injuriously affect a navigable river, canal, or inland navigation (*u*). A weir, not being a fishing weir or dam, which from any cause has been destroyed or taken down to the extent of one-half its length, must if rebuilt, have a fish-pass attached to it (*y*). Fish-passes may not be altered or obstructed so as to make them less efficient, and no one shall do anything which may scare, hinder or prevent fish from passing through a fish-pass (*z*).

Dams which are fitted with sluices for drawing off water, which would otherwise flow over them, must have the sluices shut on Sundays, and at all times when the water is not required for milling purposes, so as to cause the water to flow through the fish-pass, if there is one, or over the dam. This provision does not apply in

(*q*) Salmon Fishery Act, 1865, ss. 33, 36; *Ibid.*, 1873, s. 22.

(*r*) Salmon Fishery Act, 1865, s. 32; *Ibid.*, 1873, s. 49.

(*s*) *Garnett v. Backhouse*, (1868) L. R. 3 Q. B. 30.

(*t*) Salmon Fishery Act, 1861, s. 23.

(*u*) *Ibid.*, s. 25.

(*y*) Salmon Fishery Act, 1873, s. 46.

(*z*) Salmon Fishery Act, 1873, s. 48.

flood-time, or when it is necessary for the purposes of navigation or for repairs (*a*).

Rod and line fishing is the only mode of catching fish that is permitted within fifty yards above or one hundred yards below any weir (not being a fishing weir) (*aa*) or dam which hinders or retards the passage of salmon, or in any waters under or appurtenant to any mill, or in the head race or tail race of any mill, or in any waste race or pool connected with a mill race, or in any artificial channel connected with the weir; and a rod and line must not be used so as to wilfully scare or hinder salmon from passing through any fish-pass, or over any part of such weir usually available to salmon. These provisions do not apply to any legal fishing mill-dam not having a crib, box or cruiwe, or to any fishing box, coop, apparatus, or net or mode of fishing in connection with and forming part of such weir, for the purpose of fishing; or if an approved fish-pass is attached to the weir, dam, or artificial obstruction, unless compensation has been made by the conservators of the district to the person entitled to fish in such waters (*b*). By the Salmon Fishery Act, 1861, s. 12, sub-s. 2, no one may fish except with rod and line for salmon in the head race or tail race of any mill, or within fifty yards below any dam, unless such mill or dam has attached to it an approved fish-pass which has constantly running through it sufficient water to allow salmon to pass up and down.

Fishing weirs and fishing mill-dams must be so constructed that the boxes and cribs have the upper surface of the sill level with the bed of the river, and the bars or inscales of the heck or upstream side not nearer than two inches from each other, placed perpendicularly and capable of being removed; the spur or tail wall, leader, or outrigger must not extend more than twenty feet from the boxes and cribs (*c*).

Fixed engines may not be used for catching salmon or for the purpose of facilitating the catching of salmon or for detaining or obstructing their free passage, unless they were lawfully in use at the time of the passing of the Salmon Fishery Act, 1861, or within four years of that day (*d*). Any person may take and destroy illegal fixed engines, and they are deemed to be in the

(*a*) Salmon Fishery Act, 1861, s. 26; Salmon Fishery Act, 1873, s. 53.

(*aa*) It would seem that fishing weirs are not included in the term "weir" as used in s. 17 of the Salmon Fishery Act, 1873. See note *s. ante*, p. 213.

(*b*) Salmon Fishery Act, 1873, s. 17.

(*c*) Salmon Fishery Act, 1861, ss. 29, 30.

(*d*) Salmon Fishery Act, 1861, s. 11; Salmon Fishery Act, 1873, s. 18; Salmon Fishery Act, 1865, s. 39. Fixed engines used by members of the public in tidal waters for salmon are not lawful, *Perkins v. Bird*, (1865) 12 L. T. 304.

ownership of the person in whose possession they are found (*e*). The Commissioners appointed in 1865 inquired into the legality of all fixed engines for salmon, and granted certificates to those which were proved to be legal (*f*). Fixed engines may be acquired by boards of conservators under the same conditions as fishing weirs, &c. (*g*). In districts where licenses are required a fixed engine may not be used unless a license has been taken out (*h*).

GRATINGS.—A grating is defined to be any device approved by the Board of Trade for preventing the passage of fish through any channel (*i*). The Salmon Fishery Act, 1861, s. 13, made it compulsory that gratings should be placed and maintained across any artificial channel used for the supply of towns, or navigable canals whereby salmon, or the young of salmon, might be led out of the main stream. A board of conservators at their own expense may order that at certain times of the year gratings shall be placed in any watercourse, mill race, cut, leat, or other channel for conveying water for any purpose from any salmon river, provided that it does not obstruct navigation or interfere with the effective working of any mill (*k*). If there is any diminution of the flow caused by a grating the Board of Trade may cause the channel in which the grating is placed to be widened, or shall take some other means to obviate the loss of water power (*l*). The owner or occupier of the lands adjoining any grating must take steps to preserve the grating from injury or to prevent its removal (*m*). If injury is caused by the erection of a grating, the owner of the property affected may be compensated (*n*).

(*e*) *Williams v. Blackwall*, (1863) 2 H. & C. 33; *Vance v. Frost*, (1894) 58 J. P. 398.

(*f*) Salmon Fishery Act, 1865, ss. 40, 41.

(*g*) Salmon Fishery Act, 1873, s. 49.

(*h*) Salmon Fishery Act, 1865, ss. 33, 36; Salmon Fishery Act, 1873, s. 22.

(*i*) Salmon Fishery Act, 1873, s. 4.

(*k*) Salmon Fishery Act, 1873, ss. 39 (10), 58.

(*l*) Salmon Fishery Act, 1873, s. 59.

(*m*) Salmon Fishery Act, 1873, s. 61.

(*n*) Salmon Fishery Act, 1873, s. 54.

CHAPTER XI.

CLOSE SEASONS.

SALMON.—The young of salmon (*a*) and unclean and unseasonable salmon are at all times of the year protected. No one may wilfully take or destroy them, or disturb any spawning bed on which the spawn of salmon may be. Salmon when spawning, or when on or near their spawning beds, may not be disturbed or caught except by persons lawfully entitled to take salmon or the young of salmon for artificial propagation or other scientific purposes (*b*). When the spawning beds in streams are from their nature liable to be destroyed, a board of conservators may take steps, with the consent of the Board of Trade, to prevent salmon entering such streams (*c*). The annual close season for salmon is fixed by the Salmon Fishery Act, 1861, s. 17, to be from 1st September to 1st February inclusive, except that a rod and line may be used from 1st September to 1st November. In districts under the control of a board of conservators this season may be varied, but it must not be less than one hundred and fifty-four days for all modes of fishing, except rod and line, and must not commence later than 1st November. In such districts the close season for rod and line fishing must not commence later than 1st December, and must not be less than ninety-two days (*d*). The close season for putts and putchers is from 1st September to 1st May, but the regulations in the Salmon Fishery Acts, 1861 to 1876, as to weekly close time do not apply to this mode of fishing (*e*). During the annual and weekly close seasons, nothing must be done to deter salmon from passing up rivers (*f*). From 1st January to 24th June no devices are to be placed in non-tidal waters to catch or obstruct fish descending the stream, and at no time of the year may any contrivance be placed on the apron of a weir, except wheels or leaps for taking lamperns, between 1st August and 1st March (*g*). The insecles, hecks, hatches, tops and rails of all

a) Definition, Salmon Fishery Act, 1861, s. 4.

b) Salmon Fishery Act, 1861, ss. 15, 16. As to wilfully taking, see *Hopton v. Thirwall*, (1863) 9 L. T. 327.

c) Salmon Fishery Act, 1873, s. 60.

d) Salmon Fishery Act, 1873, s. 39. For close seasons, see Annual Reports of Inspectors of Salmon Fisheries.

e) Salmon Fishery Law Amendment Act, 1879, s. 2.

f) Salmon Fishery Act, 1873, s. 16.

g) *Ibid.*, s. 15.

cruives, boxes, or cribs, and all planks and temporary fixtures used for taking or killing salmon, and all obstruction to the free passage of fish in or through the cruives, boxes, or cribs, must be removed during the annual close season (*h*).

The weekly close season for salmon for all modes of fishing, except rod and line, or putts and putchers, is from noon on Saturday until six o'clock on Monday morning (*i*). In districts under the jurisdiction of boards of conservators this time may be varied; but it must not commence earlier than six o'clock on Friday afternoon, or terminate earlier than midnight on Sunday following, nor continue later than noon on the Monday following, and in no case is to exceed forty-eight hours (*k*). During this close time all cribs, boxes, or cruives, whether used for taking salmon or not, must have a clear opening of not less than four feet in width from the bottom to the top, and the inscales and rails of all boxes, cruives, or cribs must be removed (*l*).

TROUT AND CHAR.—The close time for these fish in salmon rivers and in waters within the limits of the Freshwater Fisheries Act, 1878, is from 2nd October to 1st February inclusive (*m*). This time may be varied by boards of conservators, but must not commence earlier than 2nd September nor later than 2nd November, and must not be less than one hundred and twenty-three days (*n*).

FRESHWATER FISH.—The close season for freshwater fish, other than pollan, trout, char, eels, and those kinds of fish which migrate to and from the open sea, is from 15th March to 15th June inclusive (*o*).

Boards of conservators appointed under the Salmon Fisheries Act, 1876, or the Freshwater Fisheries Act, 1878, may, with the consent of the Board of Trade, exempt the whole or any part of their district from the above close season (*p*).

EELS AND POLLAN.—There is no close season for these fish; but angling for eels is not allowed during the close season for freshwater fish (*q*). In salmon rivers baskets and traps or devices (*r*) for catching eels may not be used between 1st January and 24th June (*s*).

(*h*) Salmon Fishery Act, 1861, s. 20. As to hatches, see *Hodgson v. Little*, (1863) 1 L. T. 358.

(*i*) Salmon Fishery Act, 1861, s. 21; Salmon Fishery Law Amendment Act, 1879, s. 2.

(*k*) Salmon Fishery Act, 1873, s. 39, sub-s. 2.

(*l*) *Ibid.*, 1861, s. 22.

(*m*) Salmon Fishery Act, 1865, s. 64; Freshwater Fisheries Act, 1878, s. 5.

(*n*) Salmon Fishery Act, 1865, s. 64; Salmon Fishery Act, 1876, s. 4; Freshwater Fisheries Act, 1878, s. 10.

(*o*) Freshwater Fisheries Act, 1878, s. 11; Freshwater Fisheries Act, 1886, s. 1.

(*p*) Freshwater Fisheries Act, 1878, s. 11, sub-s. 7. See note (*a*), *ante*, p. 214.

(*q*) *Ibid.*, 1886, s. 1.

(*r*) See *Briggs v. Swanwick*, (1883) 10 Q. B. D. 510.

(*s*) Salmon Fishery Act, 1873, s. 15.

CHAPTER XII.

LICENSES.

IN all waters subject to the control of a board of conservators licenses must be granted to all persons using a rod and line for salmon, and in respect of all fishing weirs, fishing dams, putts, putchers, nets, or instruments, or devices whereby salmon are caught (*a*). A person can fish with a rod and line for fish other than salmon without a license, but may not use any other device by which salmon are caught, although such device is only used for catching fish other than salmon (*b*). A license must be granted to any person who demands one and tenders the amount of the duty, but a license does not confer any right to fish in any place or at any time, and does not legalise the instrument licensed (*c*), and a license for rod and line is only available for a single rod and line (*d*) and is not transferable (*e*). They are only available in the fishery district, and for the fishing season of the year for which they are granted. A person who takes fish without a license is liable to a fine, but the fish must be alive (*f*). Holders of licenses granted under the Salmon Fishery Act, 1861, must produce them to any licensee under that Act, or to any conservator or water bailiff (*g*). A licensee forfeits his license on being convicted a second time of an offence against the Salmon Fishery Acts, 1861 and 1865 (*h*).

Any person entitled to an exclusive right of fishing for salmon may obtain a general license which will enable him and any person authorised by him in writing to fish for salmon in any legal manner in such fishery (*i*). Licenses granted for public or common fisheries

(*a*) Salmon Fishery Act, 1865, s. 33.

(*b*) *Marshall v. Richardson*, (1889) 60 L. T. 605; *Lync v. Leonard*, *Lync v. Fennell*, (1868) L. R. 3 Q. B. 156. See cases cited in notes to s. 36, Salmon Fishery Act, 1865, *post*, Appendix.

(*c*) Salmon Fishery Act, 1865, s. 34; Salmon Fishery Act, 1873, s. 21.

(*d*) *Cambridge v. Harrison*, 1895 72 L. T. 592.

(*e*) Salmon Fishery Act, 1873, s. 21 (5).

(*f*) *Gazard v. Cooke*, (1890) 55 J. P. 102; Salmon Fishery Act, 1865, ss. 35, 36; Salmon Fishery Act, 1873, s. 21.

(*g*) Salmon Fishery Act, 1865, s. 37.

(*h*) *Ibid.*, s. 56.

(*i*) Salmon Fishery Act, 1865, s. 34 (4).

are only available in such fisheries, but licenses granted for rod and line fishing in a private fishery are available in a public or common fishery (*k*). Licenses for fishing weirs, fishing mill-dams, putts, putchers, fixed nets and other fixed engines, can only be used by the persons to whom they are granted, but licenses for movable nets, &c., may be used by the person to whom they are granted or his agents or servants, in which case their names must be endorsed on the license, but not more names than twice the number of persons required to work the nets may be so endorsed. The maximum duty payable in respect of licenses is set out in the third schedule of the Salmon Fishery Act, 1873. A board of conservators may vary the license duties with the consent of the Board of Trade (*l*).

A conservancy board may also, with the consent of the Board of Trade, levy additional duties, not exceeding 25 per cent., to pay for improvements to be made to facilitate the passage of salmon (*m*).

The scale of licenses is proved by a copy certified in pursuance of the Documentary Evidence Act, 1868 (*n*).

By the Freshwater Fisheries Act, 1873, s. 7, power was given to boards of conservators to grant licenses for the day, week or season to persons fishing for trout or char, and for that purpose the provisions of sects. 33, 34, 35, 36, 37 of the Salmon Fishery Act, 1865, and sects. 21, 22, 24, 25 of the Salmon Fishery Act, 1873, are to apply as though the words "trout" and "char" were inserted throughout after the word "salmon."

A license to fish for salmon is available for trout and char, and the trout and char licenses are not to cost more than one-third the amount chargeable for salmon under the provisions of the 21st section of the Salmon Fishery Act, 1873 (*o*). Freshwater fishery boards of conservators appear to have power to grant licenses because they have similar powers to those conferred on boards of conservators by sect. 27 of the Salmon Fishery Act, 1865 (*p*).

(*k*) Salmon Fishery Act, 1873, s. 21.

(*l*) Salmon Fishery Act, 1873, ss. 25, 39 (6).

(*m*) *Ibid.*, s. 57.

(*n*) *Ibid.*, s. 64.

(*o*) Freshwater Fisheries Act, 1878, s. 7.

(*p*) *Ibid.*, 1884, s. 2.

CHAPTER XIII.

SALE AND EXPORTATION OF FISH.

I. SALE.—No license is required for selling fish under the Pedlars Act, 1871, or the Hawkers Act, 1888 (*a*), and it is not necessary to take out a license as an auctioneer to sell fish by auction upon the sea-shore where the same shall have been first landed (*b*).

Young salmon and unclean or unseasonable salmon, trout and char may not be bought, sold, exposed for sale, or even held in possession (*c*), unless they have been obtained for the purpose of artificial propagation or other scientific purposes (*d*).

No one may buy, sell, or expose for sale, or have in his possession for sale any salmon between the 3rd day of September and the 1st day of February, unless the salmon were cured, salted, pickled or dried beyond the limits of the United Kingdom; or, if in the United Kingdom, they were cured between 1st day of February and the 3rd day of November; or unless they are clean fresh salmon caught in the United Kingdom in districts where their capture was at the time lawful; or unless they are clean fresh salmon caught beyond the limits of the United Kingdom. The burden of proving these exceptions lies on the person in whose possession the fish are found. Salmon caught by rod and line after 1st September in the United Kingdom may not be sold or exposed for sale (*e*), although their capture may be lawful.

Trout and char may not be sold, bought, exposed for sale, or held in possession for sale between the 2nd day of October and the 1st day of February (*f*), and this provision applies although the fish were caught elsewhere than in England and Wales (*g*). It would seem that trout and char caught in a district for which the close season does not begin till November, may not be bought or sold;

(*a*) 34 & 35 Vict. c. 96, s. 23 (2); 51 & 52 Vict. c. 33, s. 3 (*c*).

(*b*) Customs and Inland Revenue Act, 1870, s. 5.

(*c*) Salmon Fishery Act, 1861, ss. 14, 15; Salmon Fishery Act, 1873, s. 18, sub-s. 8.

(*d*) Salmon Fishery Act, 1861, s. 15.

(*e*) Salmon Fishery Act, 1873, s. 19.

(*f*) *Ibid.*, s. 20.

(*g*) Per Mathew, J., in *Price v. Bradley*, (1885) 16 Q. B. D. 148.

because the 20th section of the Salmon Fishery Act, 1873, contains no provisions similar to those in the 19th section of that Act relating to salmon. Freshwater fish (other than pollan, trout, char, and eels), which live in fresh water and do not migrate to the sea, may not be bought or sold during the close season from the 15th day of March to the 15th day of June, although they may in some districts be lawfully captured (*h*). This provision applies to fish caught outside the limits of England and Wales (*i*). Fish unfit for human food may not be exposed for sale, and fish of that description may be seized by any medical officer of health or sanitary inspector. It is equally an offence to have fish deposited in any place for sale, or place of preparation for sale, which is unfit for food. In London the offence is punishable by a fine of 50*l.*, or imprisonment with or without hard labour for six months. Elsewhere the extreme penalty is 20*l.*, or imprisonment for three months (*k*). Oysters, crabs, and lobsters, which are prohibited from being sold by the Fisheries (Oyster, Crab and Lobster) Act, 1877, may be seized as if they were diseased or unfit for the food of man (*l*).

II. EXPORTATION.—Unclean or unseasonable salmon, or salmon caught during the close season, may not be exported or entered for that purpose at the Custom House (*m*); and at no time may salmon be exported without being entered at the Custom House. If salmon are shipped or exported, or brought to any place for exportation, between the 3rd day of September and the 30th day of April, without being entered at the Customs, they are forfeited. During that period any officer of Customs may open any box which he suspects to contain salmon, and may detain the salmon until proof is given that they may be lawfully exported; and if while in his custody they become unfit for food, he may destroy them (*n*).

Between the 3rd day of September and the 1st day of February no one may send by any carrier salmon, trout, or char, unless the package in which they are placed has a description on the outside of its contents (*o*).

By the Customs and Inland Revenue Act, 1881, s. 9, fresh salmon, caught by British subjects and imported in British ships, may be imported into the United Kingdom without report of entry.

(*h*) The Freshwater Fisheries Act, 1878, s. 11, sub-s. 4. For districts see annual reports of Inspectors of Salmon Fisheries.

(*i*) *Price v. Bradley*, (1885) 16 Q. B. D. 148.

(*k*) Public Health (London) Act, 1891, s. 47; Public Health Act, 1875, ss. 116, 117.

(*l*) Fisheries (Oyster, Crab and Lobster) Act, 1877, s. 12.

(*m*) Salmon Acts Amendment Act, 1863.

(*n*) Salmon Fishery Act, 1865, s. 65.

(*o*) Salmon and Freshwater Fisheries Act, 1892, s. 3.

APPENDIX.

STATUTES.

[NOTE.—The black figures in the margin indicate the pages on which the particular section is referred to.]

9 HEN. III. MAGNA CHARTA. A.D. 1224.

C. 16.—Nulla riparia decetero defendatur nisi ille que fuerunt in defenso tempore Regis Henrici avi nostri per eadem loca et eosdem terminos sicut esse consueverunt tempore suo. 7—10, 15, 17, 18, 33.

No banks (rivers) shall be defended from henceforth but such as were in defence in the time of King Henry our grandfather, by the same places and the same bounds as they were wont to be in his time.

C. 26.—Omnes kidelli decetero deponantur penitus per Tamisiam et Medeweyam et per totam Angliam nisi per costeram maris. 171, 175, 215.

All weirs from henceforth shall be utterly put down through Thames and Medway, and through all England, except by the sea-coasts.

17 EDW. II., STAT. 1, c. 11.

Item habet warectum maris (a) per totum regnum ; wallenas et sturgesones captos in mari vel alibi infra regnum, exceptis quibusdam locis privilegiatis per Regis. 173, 191.

Also the King shall have wreck of the sea (a) throughout the realm ; whales and sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the King.

1 JAMES I. c. 23.

An Act for the better Preservation of Fishing in the Counties of Somerset, Devon and Cornwall, and for the Relief of Bakers, Condors and Fishermen, against Malicious Suits. 94, 97, 178, 197.

[A.D. 1603.]

WHEREAS the trade of fishing for Herrings, Pilchards and Seanfifh within the counties of Somerset, Devon and Cornwall, is and of

(a) The words "wreck of the sea" are repealed by the Merchant Shipping Act, 1894, sch. 22.

late time hath been very great and profitable, as well to divers of the Fishermen and inhabitants which dwell near the sea-coasts within the said counties, as in the cities of London and Exeter, and elsewhere within the Realm of England and the dominions thereof : And whereas also for the necessary use of the taking of the said Herrings, Pilchards and other Sean-fish, divers persons within the said counties called Balkers, Huors, Condors, Directors or Guidors at the fishing times for the said Herrings, Pilchards and other Sean-fish within the said counties, time out of mind have used to watch and attend upon the high hills and grounds near adjoining to the sea-coasts within the said counties, for the discovery and giving notice to the Fishermen and inhabitants near adjoining, when the said Herrings Pilchards and Sean-fish come towards or near the sea-coasts there, and for the guiding and directing of the Fishermen in their boats upon the sea-coasts for the taking of the said Herrings, Pilchards and other Sean-fish.

II. And whereas also now of late divers persons having lands, tenements and hereditaments near or adjoining to the sea-coasts within the said counties where the fishing places for the taking of the said Herrings, Pilchards and other Sean-fish are, have brought their actions of trespass at the common law, as well in the High Courts of Record at Westminster, as in the inferior Courts within the said counties, not only against such Balkers, Huors, Condors, Directors and Guidors, but also against such Fishermen and other persons, for breaking of their close, as have attended their seans or nets for the drawing and carrying of the said fish on land or shore, and have recovered against them costs and damages, to their great loss and expences : by reason whereof, such Watchmen, Balkers, Huors, Condors, Directors and Guidors, and such other persons as heretofore have attended the said seans and fishing, have forbore to enter into or go upon the lands, tenements and hereditaments, near adjoining to such fishing places within the said counties, for the watching or discovery of the said Herrings, Pilchards and other Sean-fish, or to balk, hue, cond or direct, or to attend the seans or nets as heretofore they have done, and will likewise forbear the same hereafter, if provision be not had and made that they may lawfully enter into and upon such lands, tenements and hereditaments, as do lie near or adjoining to the said sea-coasts and places of fishing as aforesaid, for the watching, balking, directing and attending of the seans, as is aforesaid.

Balkers, &c.,
may enter
into grounds
of others to
take or dis-
cover fish.

94, 97.

III. For remedy whereof, and for the maintenance of the said trade of fishing, which doth so greatly tend to the profit of many of the inhabitants within the said counties, and others, Be it therefore enacted by our Sovereign Lord the King, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled,

that it shall and may be lawful at all time and times hereafter, to and for all and every such Watchman, Balkers, Huors, Condors, Directors and Guidors, and all such Fishermen and all other persons as shall necessarily attend the said seans or nets, as aforesaid, at the times of fishing for Herrings, Pilchards and other Sean-fish within the said counties where such fish shall hereafter be taken, to enter and go into and upon any lands, tenements and hereditaments, which do lie or adjoin near unto any such fishing places, and sit, convenient and necessary to watch and balk in, or to draw and carry the said fish on shore, and there to watch for the said fish, and to balk, hue, cond, direct and guide the Fishermen which shall be upon the said sea and sea-coasts for the taking of the said fish, and to draw and carry the said fish on land or shore, any law, usage or custom to the contrary in anywise notwithstanding.

IV. And be it further enacted by the authority aforesaid, that if any action of trespass or other suit shall at any time hereafter happen to be attempted and brought against any person or persons for entering and going on the land for watching of the said fish, or for balking, huing, conding, directing or guiding of the said Fishermen in their boats upon sea or sea-coasts for taking of the said fish, or for the landing of the said fish, as aforesaid, by authority of this present Act, the defendant or defendants in any such action or suit shall and may plead not guilty for any thing doing by virtue of this Act: And upon the trial of that issue, the whole matter to be given on both parties in evidence, according to the very truth of the same: And after such issue tried for the defendant or defendants, or non-suit of the plaintiff or plaintiffs after appearance, the same defendant or defendants to recover his or their damages, by reason of his or their wrongful vexation in that behalf, with costs also in that behalf sustained; and that to be assessed by the same jury that shall try the said issue; or else by writ to enquire of the damages, as the case shall require; for which costs and damages such defendant shall and may by virtue of this Act take and sue forth such execution as the defendant in a *replevin* may do.

Plea for
Condor, &c.,
in action of
trespass.

Costs,
Damages

An Act for the Encouragement of the White Herring Fishery. [1771.]

WHEREAS the carrying on and improvement of the British White Herring Fisheries are of great importance to these kingdoms, by increasing the trade and navigation thereof, and being a nursery for seamen, and otherwise a means of employing and providing for great numbers of industrious poor, provided that reasonable encouragement

be given to such persons as are willing to carry on the said Fisheries : . . .

1—10. [Repealed by 31 & 32 Vict. c. 45.]

Persons employed in the said Fisheries to have the free use of all ports, harbours, &c., in Britain and the islands thereto belonging.

94, 97. 181.
196.

Offenders to forfeit 100l.

Saving as to dues for artificial harbours or piers.

181.

Penalty to be determined by bill or information.

181.

11. And . . . all and every person or persons employed in the said Fisheries (*b*) may fish in any part of the British seas, and shall have and exercise the free use of all ports, harbours, shores and forelands in Great Britain, or the islands belonging to the Crown of Great Britain, below the highest high-water mark, and for the space of 100 yards on any waste or uncultivated land beyond such mark, within the land, for landing their nets, casks, and other materials, utensils, and stores, and for erecting tents, huts and stages, and for the landing, pickling, curing, and reloading their fish, and in drying their nets, without paying any foreland or other dues, or any other sum or sums of money, or other consideration whatsoever, for such liberty (except as hereinafter is excepted), any law, statute, or custom to the contrary notwithstanding : And if any person or persons shall presume to demand or receive any dues, sums of money, or other consideration whatsoever, for the use of any such ports, harbours, shores, or forelands within the limits aforesaid, or shall obstruct the fishermen, or other persons employed in the taking or curing of fish, or drying their nets, in the use of the same, every person so offending shall, for every such offence, forfeit the sum of one hundred pounds, to be recovered and levied in manner hereinafter directed.

12. Provided always, that nothing in this Act contained shall extend to exempt the vessels or boats employed in the said fisheries from the payment of such harbour or pier dues as are, and by the law ought to be, demanded for ships, vessels, or boats, in piers or harbours, which are built or artificially made, but that such harbour or pier dues shall be paid in like manner as the same was liable to be paid before the passing of this Act.

3. And . . . the penalty hereinbefore mentioned shall and may be prosecuted and determined by bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland respectively : wherein no essoin, protection, privilege, wager of law, or more than one imparlance, shall be allowed, and one moiety of such penalty shall be to the use of his Majesty, and the other moiety to such person or persons as will sue for and prosecute the same.

b British White Herring Fisheries, see preamble of Act.

6 & 7 VICT. c. 79.

An Act to carry into effect a Convention between Her Majesty and the King of the French concerning the Fisheries in the Seas between the British Islands and France (c). [22nd August, 1843.]

95. 182.

[*Short title.*—The Sea Fisheries Act, 1843, given by Short Titles Act, 1892.]

WHEREAS a Convention was concluded between Her Majesty and the King of the French on the second day of August in the year one thousand eight hundred and thirty-nine defining the limits of the oyster fishery between the island of Jersey and the neighbouring coast of France, and also defining the limits of the exclusive right of fishery on all other parts of the coasts of the British Islands and France: And whereas by the eleventh Article of the said Convention it is stipulated and agreed, that “with a view to prevent the collisions which now from time to time take place on the seas lying between the coasts of Great Britain and of France between the trawlers and the line and long net fishers of the two countries, the high contracting parties agree to appoint, within two months after the exchange of the ratifications of the present Convention, a Commission, consisting of an equal number of individuals of each nation, who shall prepare a set of Regulations for the guidance of the fishermen of the two countries in the seas above-mentioned; the Regulations so drawn up shall be submitted by the said Commissioners to the two Governments respectively for approval and confirmation: and the high contracting parties engage to propose to the Legislatures of their respective countries such measures as may be necessary for the purpose of carrying into effect the regulations which may be thus approved and confirmed”: And whereas, pursuant to the said Convention, Commissioners duly appointed and authorized by Her Majesty and His Majesty the King of the French respectively have agreed upon certain articles set forth in the Schedule annexed to this Act for the guidance of the fishermen of the two countries in the seas lying between the coasts of the United Kingdom of Great Britain and Ireland and those of the Kingdom of France, which Articles, in further fulfilment of the said Convention, have been approved and confirmed on the part of Her

(c) This Act is repealed by the Sea Fisheries Act, 1868, s. 71: but by the Fisheries (Oyster, Crab and Lobster) Act, 1877, s. 15, it is enacted, that notwithstanding anything contained in the Sea Fisheries Act, 1868, this Act, so far as regards French fishermen and French sea fishing boats, shall be in force until the day when the Convention set out in the first schedule to the Sea Fisheries Act, 1868, comes into operation; and by the Sea Fisheries Act, 1883, s. 24, it is provided that on certain conditions this Act may be repealed by Order in Council from a date fixed by the order; and sect. 30 and sched. 11, Part I. of that Act repeals so much of the schedule of this Act as prohibits any French fishing boat from approaching nearer to any part of the coast of the United Kingdom than the limit of three miles, and so much of the rest of this Act as relates to the portion of the schedule thereby repealed.

Confirmation
of Articles.

Majesty by one of Her Majesty's Principal Secretaries of State, and on the part of His Majesty the King of the French by the Ambassador Extraordinary of His said Majesty to the Court of London: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said Articles shall be binding on all persons, and shall have the force of law, as fully as if they were herein severally and specially enacted.

Amendment
of 13 & 14
Car. 2, c. 28.

II. And whereas by the said Convention and Articles French fishermen are forbidden to fish in the seas between the British Islands and France within the distance of three miles from low-water mark, as defined in the said Convention and Articles, but are not forbidden to fish anywhere beyond the said distance of three miles: And whereas by an Act passed in the reign of King Charles the Second, intituled An Act for the Regulation of the Pilchard Fishery in the counties of Devon and Cornwall, the taking of fish in the manner therein mentioned is forbidden, unless it be at the distance of one league and a half at least from the shores of Devon and Cornwall respectively; be it enacted, that after the passing of this Act the said Act of the reign of King Charles the Second shall be construed as it instead of the distance of one league and a half the distance specified in the said Convention and Articles had been therein inserted and specified as the distance within which such taking of fish as is therein mentioned is forbidden, that is to say, the distance of the geographical miles (of which sixty make a degree of latitude), which distance shall be reckoned from low-water mark, except in bays, the mouths of which do not exceed ten such geographical miles in width; and for such bays shall be reckoned from a straight line drawn from low-water mark off one headland to low-water mark off the other headland of such bays respectively.

For enforcing
Convention
and Articles.

III. . . . It shall be lawful for the Lords of the Committee of Her Majesty's Privy Council appointed for trade and foreign plantations, if and when they shall think fit, to appoint so many persons as they shall think necessary to ensure the due execution of the said Convention and Articles, and it shall be lawful for every person so authorized, at all reasonable times, upon producing his authority, if required, to board or enter upon and examine every British vessel, and to examine the nets, instruments, and implements of fishing thereunto belonging or used therewith: and if any of the said nets, instruments or implements of fishing shall be found in contravention of the said Convention and Articles they shall be forfeited to Her Majesty, and the person in whose possession the same shall be found shall, on conviction, be liable to a penalty of not less than eight shillings or more than three pounds, or to be imprisoned, with or without hard labour for any time not less than two days and not longer than ten days, or

if convicted more than once of having such unlawful nets, instruments, or implements in his possession, shall be liable to a penalty not more than six pounds, or to be imprisoned, with or without hard labour, for any time not longer than twenty days.

IV. . . . It shall be lawful for the Lords of the Committee of Her Majesty's Privy Council appointed for trade and foreign plantations, from time to time as may become necessary, to make and ordain such rules and bye-laws as to them shall seem expedient for the more effectual performance of the said Convention and Articles, and from time to time to annul or alter the same, and substitute others instead thereof; and it shall be lawful for the Lords of the said Committee to impose any penalty not exceeding five pounds in all cases where any penalty is not fixed by this Act or by the said Articles for any breach of the said rules and bye-laws, and to direct that all nets, instruments, or implements of fishing whatsoever used contrary to any of such rules and bye-laws shall be forfeited, destroyed, or removed, as the case may require: Provided always, that all such rules and bye-laws shall be approved by Her Majesty, with the advice of Her Privy Council, and all the said rules and bye-laws, when so approved and confirmed, and until annulled or altered by the like authority, shall be binding on all persons as if the same had been herein enacted.

Board of Trade empowered to make bye-laws for protection of fisheries.

V. . . . The said rules and bye-laws, when approved as aforesaid, shall be printed, and a copy of the same shall be deposited with the clerk of the peace for each county adjoining the seas in which such rules and bye-laws are proposed to be enforced, and in the islands of Guernsey, Jersey, Sark, Alderney, and Man, and with all the collectors of the Customs and coast-guard officers at the different stations, and in such and so many places as to the Lords of the said Committee shall seem fit; and printed copies of the said rules and bye-laws shall be provided by the Lords of the said Committee, and sold at a price not exceeding one shilling for each copy; and notice, both of the publication of the same, and the place or places where the same may be bought, shall be given for three calendar months subsequent to the publication thereof in such of the metropolitan and provincial newspapers as the Lords of the said Committee shall appoint: and for the purpose of convicting any person offending against the said rules and bye-laws, a printed copy of such rules and bye-laws obtained from the office of any clerk of the peace with whom the same may be lodged, and certified by him to be a true copy thereof, shall be taken as evidence of such rules and bye-laws, and the due publication thereof.

Publication of bye-laws.

VI. [*Recital.*] It shall be lawful for the Lords of the said Committee, by a rule or rules to be made by them from time to time, and approved of by Her Majesty with the advice of Her Privy Council, to suspend the operation of the said Articles and of this Act, or such part

Articles may be suspended in Ireland while there is no mixed

fishery there.
5 & 6 Vict.
c. 106.

of them as to them shall seem fit with respect to the fisheries on the coast of Ireland, or on any part thereof, so long as such fisheries shall be carried on exclusively by the subjects of Her Majesty, and also, with the like approval, to make such bye-laws as to them shall seem fit for enforcing the said Articles and this Act on the said coast of Ireland or on any part thereof, as soon as the same shall be frequented for the purpose of fishery by French fishermen.

Rules and
bye-laws to be
laid before
Parliament.

VII. . . . All rules and bye-laws made by the Lords of the said Committee in pursuance of this Act shall be laid before Parliament within six weeks next after the approval thereof by Her Majesty, if Parliament be then sitting, or if not, then within six weeks next after the next meeting of Parliament.

Repeal of part
of 5 & 6 Vict.
c. 106.

VIII. [Repeal of part of 5 & 6 Vict. c. 106.] The several collectorships of Customs on the coast of Ireland shall be substituted for the districts established under the authority of the said Act : and that the numbers, marks, and letters by which all British vessels engaged in fishing between the coasts of the United Kingdom and France shall be distinguished shall be in conformity with the said Convention and Articles ; and the registry of all such vessels shall be kept under the superintendence of the Commissioners of Her Majesty's Customs, and in conformity with the said Convention and Articles.

Officers and
men of Her
Majesty's
cruisers, and
officers and
men of revenue
and coast-
guard service,
empowered to
enforce the
provisions of
this Act.

IX. . . . It shall be lawful for such officers and petty officers belonging to Her Majesty's Navy or revenue service, and for such officers and men of the coast-guard stations as shall be thereunto authorized by the Commissioners of Her Majesty's Customs, and such persons as shall be appointed as aforesaid by the Lords of the said Committee, subject to such directions as the Lords of the said Committee shall from time to time think fit to prescribe, to go on board any British vessel employed in fishing, and examine the certificate of registry, and nets, instruments, and implements of fishing belonging to or used with such vessel, and whether the regulations of this Act have been complied with, and whether the master or other persons on board such vessel are carrying on the said fishery in the manner hereby required, and to seize any nets, instruments, or implements of fishing which are illegal or used contrary to the provisions of this Act, or any of the rules or bye-laws made by the Lords of the said Committee ; and it shall be lawful for the officers and men employed in Her Majesty's Navy or revenue service, and in the coast-guard service, and such other persons as shall be appointed for that purpose by the Lords of the said Committee, to execute for the purposes of this Act, on sea or on land, the warrants of any justice or justices of the peace as fully as any person authorized to execute warrants of any justice of the peace may now execute the same on land within their respective districts, and also to do all such other

acts on sea or land, in relation to the preservation of the peace among persons engaged in fishing, and the enforcement of the provisions of this Act, as any constable may lawfully do within the limits of his jurisdiction.

X. . . . Every person assaulting, resisting, or wilfully obstructing any other person, duly authorized under the provisions of this Act to enforce the execution of the said Articles, in the performance of his duty, on conviction before any magistrate or justice of the peace by the oath of any credible witness, or upon his own confession, shall be liable to a penalty not more than five pounds, or may be imprisoned, with or without hard labour, for any time not longer than twenty-one days.

Penalty for obstructing persons on duty.

XI. . . . All offences against the said Articles, or against any rule or bye-law made in pursuance of this Act, committed by any of Her Majesty's subjects may be heard and determined upon the oath of any credible witness or witnesses, or upon the confession of the party accused, by any magistrate or justice of the peace having jurisdiction in the county or place in which or in the waters adjacent to which the offence shall be committed or to which the offender shall be brought; and every such magistrate or justice of the peace shall have power to award the penalties provided by the said Articles, or by any such rule or bye-law respectively, for the offence of which the offender shall be convicted; and whenever any pecuniary penalty and forfeiture shall be imposed on any such offender, and shall not be forthwith paid, with the reasonable costs and charges attending the conviction, the same shall be levied by distress and sale of the goods of the offender by warrant under the hand and seal of such magistrate or justice of the peace (*d*).

Who shall have cognizance of offences by British subjects.

XII. (*e*) . . . All offences against the said Articles, or against any rule or bye-law made in pursuance of this Act, committed by any subject of the King of the French, or any person serving on board any French fishing boat or vessel, within the limits within which the general right of fishery is by the said Articles exclusively reserved to the subjects of Her Majesty, may be heard and determined upon the oath of any credible witness or witnesses, or upon the confession of the party accused, by any magistrate or justice of the peace having jurisdiction in the county or place in which or in the waters adjacent to which the offence shall have been committed or to which the offender shall be brought; and the offender, upon conviction, shall pay such penalty not exceeding ten pounds as the magistrate

Who shall have cognizance of offences by French subjects within the British fishery limits.

(*d*) No action can be brought for damages caused by breach of this Act in the High Court, but disputes must be settled by the tribunals appointed by the Act: *Moeshall v. Nicholls*, 1852 18 Q. B. 882.

(*e*) See Sea Fisheries Act, 1883, 2nd Schedule, Part I., as to repeal of some of the provisions of this Act.

or justice of the peace shall award, or instead of awarding a pecuniary penalty, and also in case of the non-payment of any pecuniary penalty awarded, it shall be lawful for the magistrate or justice of the peace to order that the vessel to which the offender belongs shall be detained for any period not exceeding three calendar months.

Proceedings
in case of
offences by
French sub-
jects beyond
the British
fishery limits.

XIII. . . . Whenever any subject of the King of the French, or any person serving on board any French fishing boat or vessel, charged with any transgression against the said Convention and Articles, shall be brought into any British port, pursuant to the sixty-fifth Article, in order that the offence may be duly established, it shall be lawful for the person by whom such supposed offender shall be so brought, or for any person acting under his authority, to take such supposed offender forthwith before a magistrate or justice of the peace, and all constables and peace officers and others shall be required, if necessary, to give their assistance for that purpose; and it shall be lawful for the magistrate or justice of the peace before whom any such supposed offender shall be brought to inquire by all lawful ways and means into the case; and a copy of the depositions minutes of proceedings, and all other documents concerning the transgression shall be authenticated under the hand of the collector of Customs, and shall be sent by him to the British consular agent residing in the port to which the offender's boat or vessel belongs.

Compensation
for damage.

XIV. . . . In all cases where the breach of any of the said Articles, or of any such rules or bye-laws, by any of the subjects of the King of the French within the limits within which the general right of fishery is by the said Articles exclusively reserved to the subjects of Her Majesty, or by any of Her Majesty's subjects, whether or not within the said limits, shall have caused any loss or damage to any other party or parties, it shall be lawful for any magistrate or justice of the peace before whom the offence shall be inquired into to take evidence of such loss or damage, and to award compensation to the injured party, and to enforce payment of such compensation, in like manner as the payment of any pecuniary penalty for any offence against the said Articles may be enforced.

Salvage for
boats, &c.,
picked up at
sea.

XV. . . . Whenever any fishing boat, rigging, gear, or any other appurtenance of any fishing boat, or any net, buoy, float, or other fishing implement, shall have been found or picked up at sea and brought into a British port, and shall not be forthwith delivered to the collector of Customs, pursuant to the Sixty-first Article, it shall be lawful for any magistrate or justice of the peace, on application of the said collector, to issue his warrant for delivering of the said articles to such collector, who shall take possession of the same, and deliver the same to the owner thereof or his representative, on payment to him, for behoof of the salvors, of such compensation as the said collector shall award pursuant to the Sixty-second Article.

XVI. . . . No conviction under this Act shall be quashed, set aside, or adjudged void or insufficient for want of form only, or liable to be removed, by *certiorari* or otherwise, into Her Majesty's Court of Queen's Bench, or any other of Her Majesty's Courts of Record, but every such conviction shall be final to all intents and purposes unless the same shall be reversed on appeal as herein-after provided; Provided always, that no person shall be convicted of any offence committed against the provisions of this Act unless the prosecution for the same shall be commenced within three calendar months from the time of the commission of such offence.

Conviction
not to be
quashed for
want of form.

XVII. (*f*) In any case of a summary conviction before any magistrate or justice of the peace, any person who shall think himself aggrieved by the conviction may appeal to the Court of general or quarter sessions of the peace; and it shall be lawful for the magistrate or justice of the peace by whom such conviction shall have been made to bind over the witnesses who shall have been examined in sufficient recognizances to attend and be examined at the hearing of such appeal, and that every such witness, on producing a certificate of his being so bound, under the hand of the said magistrate or justice of the peace, shall be allowed compensation for his time, trouble, and expenses in attending the appeal, which compensation shall be paid, in the first instance, by the treasurer of the county or borough, in like manner as in cases of misdemeanour, under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, intituled An Act for improving the Administration of Criminal Justice in England; and in case the appeal shall be dismissed, and the conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the Court, shall be repaid to the treasury of the county or borough by the appellant.

Appeal.

7 G. 4, c. 64.

XVIII. . . . In this Act the words "British vessel" shall be construed to mean every British or Irish fishing vessel or fishing boat, and also every fishing vessel or fishing boat belonging to any of the islands of Guernsey, Jersey, Sark, Alderney, or Man, or any island thereunto belonging, and the words "British port" shall be construed to mean any port of Great Britain or Ireland, or of any of the said islands.

Meaning of
"British
vessel," &c.

XIX. [Repealed by Stat. Law Rev., 1891.]

(*f*) Printed as amended by Stat. Law Rev., 1891.

SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

[The whole of this schedule is repealed except as to French vessels. The part relating to British vessels has not been printed; see note (c), *ante*, p. 231.]

Regulations for the guidance of the Fishermen of France, in the seas lying between the coasts of the two countries; prepared in pursuance of the provisions of the Eleventh Article of the Convention concluded at Paris on the 2nd of August, 1839, between Her Majesty and the King of the French.

ARTICLE I.—French subjects fishing in the seas lying between the coasts of the United Kingdom of Great Britain and Ireland and those of the Kingdom of France shall conform to the following regulations.

ARTICLE II.—The limits within which the general right of fishery is exclusively reserved to the subjects of the two kingdoms respectively are fixed (with the exception of those in Granville Bay) at three miles distance from low-water mark.

With respect to bays, the mouths of which do not exceed ten miles in width, the three mile distance is measured from a straight line drawn from headland to headland.

ARTICLE III.—The miles mentioned in the present regulations are geographical miles, of which sixty make a degree of latitude.

ARTICLE IV.—The fishery limits of Granville Bay, established upon special principles, are defined in the first Article of the Convention of the second of August, one thousand eight hundred and thirty-nine, as follow:

The lines drawn between the points as designated by the letters A., B., C., D., E., F., G., H., I., K. on the chart annexed to the Convention are acknowledged as defining the limits between which and the French shore the oyster fishery shall be reserved exclusively to French subjects; and these lines are as follow; that is to say:—

The first line runs from the point A., three miles from low-water mark (Point Meinga bearing south), to the point B., of which the land-marks are Agon Tower on with the clump of trees upon Mount Huchon, and the summit of Gros Mont in a line with the signal post on Grand Isle.

The second line runs from the said point B., towards Agon Tower and the clump of trees upon Mount Huchon in the direction north, sixty-four degrees east, until at the point C. it brings the windmill of Lingreville to bear due east.

The third line runs from point C. due east towards Lingreville Windmill until the Grande Huguenant is brought to bear on the Etat Rock at point D.

The fourth line runs from point D. northward, and keeping the the Grand Huguenant in one with the Etat Rock, until it intersects at E. a line whose land-marks are Agon Tower on with Coustances Cathedral.

The fifth line runs eastward from point E. to point F. where the Steeple of Pirou is brought to bear in a line with the Senequet Rock.

The sixth line runs from point F., due north, to point G., where the steeple of Blainville is brought in a line with the Senequet Rock.

The seventh line runs from point G. (in the direction of Pirou steeple) to point H., where the lighthouse on Cape Carteret bears north, twenty-four degrees west.

The eighth line runs from point H. to point I. nearly abreast of Port Bail; point I. having for land-marks the Fort of Port Bail in a line with the steeple of Port Bail.

And finally, the ninth line runs from point I. to the Three Grunes at point K., where Cape Carteret bears east, ten degrees north, in a line with Barneville Church.

All the bearings specified in the present Article are to be taken according to the true meridian, and not according to the magnetic meridian.

ARTICLE VI.—French fishing boats shall be numbered.

There shall be a series of numbers for the fishing boats belonging to each district of maritime registry in France; and to these numbers shall be prefixed the initial letters of the names of the respective districts.

ARTICLE VII.—Whereas there are in the United Kingdom several collectorships of Customs, and in France several districts of maritime registry, the names of which begin with the same letter, in which case the initial letter alone would not suffice; the distinguishing letter or letters for the boats of each collectorship or district shall be designated by the Board of Customs in the United Kingdom, and by the Ministry of Marine in France.

ARTICLE VIII.—The letters and numbers shall be placed on each bow of the boat, three or four inches (eight or ten centimètres French) below the gunnel, and they shall be painted in white oil colour on a black ground.

For boats of fifteen tons burthen and upwards, the dimensions of these letters and numbers shall be eighteen inches (forty-five centimètres French) in height, and two and a half inches (six centimètres French) in breadth.

For boats of less than fifteen tons burthen, the dimensions shall be ten inches (twenty-five centimètres French) in height, and one and three-quarter inch (four centimètres French) in breadth.

The same letters and numbers shall also be painted on each side of the main sail of the boat in black oil colour on white sails, and in white oil colour on tanned or black sails.

These letters and numbers on the sails shall be one third larger in every way than those placed on the bows of the boat.

ARTICLE X.—All the buoys, barrels, and principal floats of each net, and all other implements of fishery, shall be marked with the same letters and numbers as those of the boats to which they belong.

194.

These letters and numbers shall be large enough to be easily distinguished. The owners of nets or other fishing implements may further distinguish them by any private marks they judge proper.

ARTICLE XI.—The letters and numbers of French fishing boats shall be inserted on the muster rolls of those boats, after being entered in the registry book kept at the Maritime Registry Office.

ARTICLE XII.—The muster rolls of French fishing boats shall contain the description and tonnage of each boat, as well as the names of its owner and of its master.

- ARTICLE XIII.—The fishermen shall, when required, exhibit their muster rolls to the commanders of the fishing cruisers, and to all other persons of either country, appointed to superintend the fisheries.
- ARTICLE XIV.—The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the said boat, in letters which shall be at least three inches (eight centimètres French) in height, and half an inch (twelve millimètres French) in breadth.
- ARTICLE XV.—It is forbidden to efface, cover, or conceal, in any manner whatsoever, the letters, numbers, and names placed on the boats and on their sails.
196. ARTICLE XVI.—Trawl fishing may be carried on during all seasons in the seas lying between the fishery limits which have been fixed for the two countries.
197. ARTICLE XVII.—Trawls shall be made with nets, the meshes of which shall be at least one inch and three-quarters (forty-five millimètres French) square, from knot to knot, along the line.
197. ARTICLE XVIII.—The length of the wooden yard or beam to which the upper part of the mouth of each trawl-net shall be fastened shall not exceed thirty-eight feet (eleven mètres five hundred millimètres French).
197. ARTICLE XIX.—The under part of the trawl-net, to a length of ten feet (three mètres French) from its extremity, may be strengthened by rubbing pieces made of old nets; but these rubbing pieces shall be so fastened that they shall not cross or narrow the meshes of the trawl-net, which must always remain at least one inch and three-quarters (forty-five millimètres French) from knot to knot, along the line, open and unobstructed.
197. ARTICLE XX.—The size of the meshes of any supplementary nets which may be added to trawls shall be at least two inches (fifty millimètres French) square, from knot to knot, along the line.
197. ARTICLE XXI.—Such supplementary nets shall be so fitted as not to cross or narrow the meshes of the trawl-net, which must always remain at least one inch and three-quarters (forty-five millimètres French) from knot to knot, along the line, open and unobstructed.
197. ARTICLE XXII.—The total weight of the two irons or headpieces of a trawl shall not exceed two hundred and eighty-seven pounds (one hundred and thirty kilogrammes French).
197. ARTICLE XXIII.—The total weight of iron chains or leads used for loading the ground rope of a trawl shall not exceed one hundred and ten pounds (fifty kilogrammes French).
197. ARTICLE XXIV.—Trawl fishing is forbidden in all places where there are boats engaged in herring or mackerel drift-net fishing.
- 196, 197. ARTICLE XXV.—Trawl boats shall always keep at a distance of at least three miles from all boats fishing for herrings or mackerel with drift-nets.
197. ARTICLE XXVI.—Whenever herring or mackerel boats shall commence drift-net fishing in any place whatever, the trawl boats which may be already fishing in such place shall depart therefrom, and shall keep at a distance of at least three miles from the said drift-net herring or mackerel boats.

- ARTICLE XXVII.—Herring fishing is free all the year round.
- ARTICLE XXVIII.—The meshes of all nets used for herring fishing shall not be less than one inch (twenty-five millimètres French) square, from knot to knot along the line. 194, 195, 196
- ARTICLE XXIX.—Whenever decked herring boats and undecked herring boats shall commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats, except they should prefer going to leeward, to a distance of at least half a mile, to shoot their nets. 195
- ARTICLE XXX.—The decked boats on their parts shall shoot their nets to leeward of the undecked boats, unless they prefer going to windward, to a distance of at least half a mile, to shoot their nets. 195
- ARTICLE XXXI.—When decked boats shall arrive on grounds where fishing is already begun by other boats, amongst which shall be undecked boats, the decked boats so arriving shall shoot their nets to leeward of the undecked boats, except they should prefer going to windward, to a distance of at least half a mile, to shoot their nets. 195
- ARTICLE XXXII.—When undecked boats shall arrive on grounds where fishing is already begun by other boats, amongst which shall be decked boats, the undecked boats so arriving shall shoot their nets to windward of the decked boats, except they prefer going to leeward, to a distance of at least half a mile, to shoot their nets. 195
- ARTICLE XXXV.—Whenever set nets are employed for the purpose of taking herrings, the boats engaged in this fishery shall always remain over their nets. 195, 196
- These boats shall moreover be bound to observe the prohibition contained in Article LVII. in favour of drift-net fishing.
- ARTICLE XXXVI.—Mackerel fishing is free all the year round. 194
- ARTICLE XXXVII.—The meshes of all nets used for mackerel fishing shall not be less than one inch and one-sixth (thirty millimètres French) square, from knot to knot, along the line. 195
- ARTICLE XXXVIII.—It is forbidden to all fishermen to load the lower parts of mackerel drift-nets with leads or stones. 195
- ARTICLE XXXIX.—Boats going to fish for mackerel with drift-nets are required, when they shall arrive on the fishing ground, to lower all sails, to show that they have taken their berths. 195
- ARTICLE XL.—The boats mentioned in the preceding Article shall keep three-quarters of a mile at least apart from one another when they shoot their nets. 195
- ARTICLE XLI.—The meshes of nets known by the name of bratt nets shall not be less than four inches and one-third (eleven centimètres French) square, from knot to knot, along the line. 196
- ARTICLE XLII.—The meshes of the middle nets of trammels shall be at least two inches (five centimètres French) square, from knot to knot, along the line. 196
- The meshes of both of the outer nets of trammels shall be at least six inches (fifteen centimètres French) square, from knot to knot, along the line.
- ARTICLE XLIII.—Fishermen using bratt nets, trammels, and other set or anchored nets shall place buoys on such nets, in order that vessels sailing in those places may avoid them. 196

- 196 ARTICLE XLIV.—Such bratt nets, trammels, or other set or anchored nets shall not, except in unavoidable cases, remain more than twenty-four hours in the sea without being taken up.
- 201 ARTICLE XLV.—Oyster fishing shall open on the first of September, and shall close on the thirtieth of April (*g*).
- ARTICLE XLVI.—From the first of May to the thirty-first of August no boat shall have on board any dredge or other implement whatsoever for catching oysters.
- 199 ARTICLE XLVII.—It is forbidden to dredge for oysters between sunset and sunrise.
- 199 ARTICLE XLVIII.—The fishermen shall cull the oysters on the fishing ground, and shall immediately throw back into the sea all oysters less than two and a half inches (six centimètres French) in the greatest diameter of the shell, and also all sand, gravel, and fragments of shells.
- 199 ARTICLE XLIX.—It is forbidden to throw into the sea on oyster fishing grounds the ballast of boats, or any other thing whatsoever which might be detrimental to the oyster fishery.
- 195, 197 ARTICLE L.—For the purpose of distinguishing by day drift-net fishing boats from trawl boats, both shall carry at the mast-head vanes, which shall be at least eight inches (twenty centimètres French) in height, and two feet (sixty-one centimètres) in length.
- The colours of these vanes shall be, for—
- French trawl boats, blue.
- French drift boats, white and blue.
- It is understood that the vanes of drift boats shall be divided vertically into two equal parts, of which the white shall be nearest to the mast.
- ARTICLE LI.—It is forbidden to all other fishing boats to carry vanes similar to those mentioned in the preceding Article.
- 94, 196 ARTICLE LII.—It is forbidden to all boats to anchor between sunset and sunrise on grounds where herring or mackerel drift-net fishing is going on.
- This prohibition does not apply to anchorages which may take place in consequence of accidents or any other compulsory circumstances, but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about three feet (one mètre French) apart, and shall keep these lights up all the time the boat shall remain at anchor.
- 194, 195 ARTICLE LIII.—In order that boats fishing with drift-nets may be easily recognised at night, the masters of these boats shall hoist on one of their masts two lights, one over the other, three feet (one mètre French) apart.
- These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise.
- 194 ARTICLE LIV.—All fishermen are forbidden, except in cases of absolute necessity, to show lights under any other circumstances than those mentioned in the present regulations.

(*g*) It is annually agreed with France that this close season shall not commence before the 15th June; see Report of Fishery Inspectors, 1901.

- ARTICLE LV.—The meshes of the various nets before mentioned shall be of the prescribed dimensions, measured when the net is wet.
- ARTICLE LVI.—It is forbidden to use nets for any other kind of fishing than that for which each of those nets may be lawfully employed, with respect to the size of its meshes, or of its fittings.
- ARTICLE LVII.—It is forbidden to set or anchor nets, or any other fishing implement, in any place where herring or mackerel drift-net fishing is going on. 195. 196,
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- ARTICLE LVIII.—No boat shall be made fast or held on to the nets, buoys, floats, or to any part of the fishing tackle, belonging to another boat. 194
- ARTICLE LIX.—It is forbidden to all persons to hook or lift up the nets, lines, or other fishing implements belonging to others, under any pretence whatsoever. 194
- ARTICLE LX.—When nets of different boats get foul of each other, the masters of the said boats shall not cut them, except by mutual consent, unless it shall have been found impossible to clear them by other means. 193
- ARTICLE LXI.—All fishing boats, all rigging, gear, or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall, as soon as possible, be delivered to the collector of Customs, if the article saved be taken into England, and to the Commissary of Marine, if the article saved is taken into France. 194
- ARTICLE LXII.—The collector of Customs, or the Commissary of Marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives. 194
- These functionaries may, when the circumstances are such as to call for it, award to the salvors a suitable compensation for their trouble and care. This compensation, which shall in no case exceed one-fourth of the actual value of the articles saved, shall be paid by the owners.
- ARTICLE LXIII.—The execution of the regulations concerning the fittings of nets and the size of their meshes, the weight and dimensions of fishing instruments, and, in short, concerning every thing connected with the implements of fishing, is placed, with respect to the fishermen of each of the two nations, under the exclusive superintendence of the cruisers and agents of their own nation.
- Nevertheless, the commanders of the cruisers of each nation shall mutually acquaint the commanders of the other nation with any transgressions of the above-mentioned regulations, committed by the fishermen of the other nation, which may come to their knowledge.
- ARTICLE LXIV.—Infractions of regulations concerning the placing of boats, the distances to be observed, the prohibition of certain fisheries by day or by night, or during certain periods of the year, and concerning every other operation connected with the act of fishing, and more particularly as to circumstances likely to cause damage, shall be taken cognizance of by the cruisers of both nations, whichever may be the nation to which the fishermen guilty of such infractions may belong.
- ARTICLE LXV.—The commanders of cruisers of both countries shall

exercise their judgment as to the causes of any transgressions committed by French fishing boats in the seas where the said boats have the right to fish in common; and when the said commanders shall be satisfied of the fact of the transgression, they shall detain the boats having thus infringed the established regulations, and may take them into the port nearest to the scene of the occurrence, in order that the offence may be duly established, as well by comparing the declarations and counter declarations of parties interested, as by the testimony of those who may have witnessed the facts.

ARTICLE LXVI.—When the offence shall not be such as to require exemplary punishment, but shall, nevertheless, have caused injury to any fisherman, the commanders of cruisers shall be at liberty, should the circumstances admit of it, to arbitrate at sea between the parties concerned, and on refusal of the offenders to defer to their arbitration, the said commanders shall take both them and their boats into the nearest port, to be dealt with as stated in the preceding Article.

ARTICLE LXVII.—Every fishing boat which shall have been taken into a foreign port, under either of the two preceding Articles, shall be sent back to her own country for trial as soon as the transgression for which she may have been detained shall have been duly established. Neither the boat nor her crew shall, however, be detained in the foreign port more than four days.

ARTICLE LXVIII.—The depositions, minutes of proceedings, and all other documents concerning the transgression, after being authenticated by the collector of Customs, or by the Commissary of Marine, according to the country into which the boat may have been taken, shall be transmitted by that functionary to the consular agent of his nation residing in the port where the trial is to take place.

This consular agent shall communicate these documents to the collector of Customs, if in the United Kingdom, or to the Commissary of Marine, if in France; and if, after having conferred with that functionary, it shall be necessary for the interest of his countrymen, he shall proceed with the affair before the competent tribunal or magistrates.

ARTICLE LXIX.—All transgressions of these regulations established for the protection of fisheries in the seas lying between the coasts of the British Islands and those of France shall, in both countries, be submitted to the exclusive jurisdiction of the tribunal or the magistrates which shall be designated by law.

This tribunal, or these magistrates, shall also settle all differences, and decide all contentions, whether arising between fishermen of the same country, or between fishermen of the two countries, and which cannot have been settled by the commanders of cruisers, or by the consular agents and the collectors of Customs, or Commissaries of Marine, according to the country.

The above-mentioned jurisdiction shall not, however, be understood to apply to murder, felony, or any other grave crime; all such crimes remaining subject to the ordinary laws of each country respectively.

ARTICLE LXX.—The trial and judgment of the transgressions

mentioned in the preceding Article shall always take place in a summary manner, and at as little expense as possible.

ARTICLE LXXI.—In both countries the competent tribunal or magistrates shall be empowered to adjudge the following penalties for offences against the regulations committed by fishermen subject to their jurisdiction :—

First. Forfeiture and destruction of nets or other fishing implements which are not conformable to the regulations.

Secondly. Fines from eight shillings (ten francs) to ten pounds sterling (two hundred and fifty francs), or imprisonment for not less than two days, and not more than one month.

ARTICLE LXXII.—The use of nets or other fishing implements of which the fittings, size of meshes, dimensions, or weight shall not be conformable to the regulations established for each kind of fishery shall subject the said nets or implements to seizure and destruction, and the offenders to a fine of not less than eight shillings (ten francs, nor more than three pounds sterling (seventy-five francs), or to imprisonment from two to ten days.

In cases of repetition of the offence, the fine or imprisonment may be doubled.

ARTICLE LXXIII.—All persons shall be condemned to a fine of from eight shillings to five pounds sterling (ten francs to one hundred and twenty-five francs), or to imprisonment from five to fifteen days, who either by night or by day, conjointly or separately, shall offend against the measures established by the regulations for the preservation of peace and good order, and specifically against those concerning—

First. The letters, numbers, and names to be placed on the boats and their sails, and on nets, buoys, &c.

Secondly. The vanes to be carried by the boats.

Thirdly. The distances to be observed between the boats.

Fourthly. The placing and anchoring of boats.

Fifthly. The placing or shooting of nets, and taking them up.

Sixthly. The clearing of nets.

Seventhly. The placing of buoys upon nets.

Eighthly. Lastly, the lights to be shown.

In cases of repetition of any of these offences, the fine or imprisonment may be doubled.

ARTICLE LXXIV. In all cases of assault committed at sea by fishermen on other fishermen, or whenever they shall have intentionally caused damages or loss, the competent tribunal or magistrates may condemn the delinquents to a term of imprisonment not exceeding twenty days, or to a fine not exceeding five pounds sterling (one hundred and twenty-five francs).

Should there have been at the same time any infringement of the regulations, the imprisonment or fine above mentioned may be awarded over and above the penalties to which the said infringement shall have given rise.

ARTICLE LXXV.—The competent tribunal or magistrates shall, when the circumstances are such as to call for it, award, over and above all penalties inflicted for offences against the regulations, the payment of damages to the injured parties, and shall determine the amount of such damages.

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ARTICLE LXXXVII.—It is forbidden to herring drift-net fishing boats to shoot their nets earlier in the day than half an hour before sunset, except in places where it is customary to carry on this drift-net fishing by daylight.

ARTICLE LXXXVIII.—Herring fishermen, being within the fishery limits of either country, shall comply with the laws and regulations of the said country respecting the prohibition of fishing on the Sabbath Day.

ARTICLE LXXXIX.—The commanders of the cruisers of each of the two countries, and all officers or other agents whatsoever appointed to superintend the fisheries, shall exercise their judgment as to the causes of any transgressions committed by the fishing boats of the other country, and when they shall be satisfied of the fact of the transgression, they shall detain or cause to be detained the boats having thus transgressed the preceding regulations (from Article LXXVI.), and shall take them or cause them to be taken into port, where, upon clear proof of the transgression being brought by the detaining party before the competent tribunal or magistrates, the said boats so transgressing may be condemned to be kept for a period not exceeding three months, or to a fine not exceeding ten pounds sterling (two hundred and fifty francs).

In testimony whereof the respective Commissioners have signed the present regulations, and have thereto affixed their seals.

Done in London, the twenty-fourth day of May in the year of our Lord one thousand eight hundred and forty-three.

(L.S.) ANTHONY PERRIER.

(L.S.) F. LANGE.

24 & 25 VICT. c. 96.

The Larceny Act, 1861. [6th August, 1861.]

Taking fish in water on land belonging to a dwelling-house; in a private fishery elsewhere.
Provision respecting anglers.

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24. Whosoever shall unlawfully and wilfully take or destroy any fish (*h*) in any water which shall run through or be on any land adjoining (*i*) or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanour; and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as herein-before mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding five pounds, as to the justice shall seem meet; Provided that nothing herein-before

(*h*) *Caygill v. Thrade*, (1885) 33 W. R. 581. Crayfish are fish within the meaning of this section.

(*i*) Adjoining implies actual contact: see *R. v. Hodges*, (1829) Mood. & Mal. 341; 53 R. R. 252.

contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset ; but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds, and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding two pounds as to the justice shall seem meet ; and if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto.

Provisions as to boundaries of parishes.

25. If any person shall at any time be found fishing against the provisions of this Act, the owner of the ground, water, or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession, and in case such offender shall not immediately deliver up the same, may seize and take (*k*) the same from him for the use of such owner ; Provided, that any person angling against the provisions of this Act, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling.

The tackle of fishers may be seized.

191. 210

Angler, on seizure of his tackle, exempt from penalty.

26. Whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny ; and whosoever shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall unlawfully and wilfully, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding three months, with or without

Stealing or dredging for oysters in oyster fisheries.

192

(*k*) This can only be done on the ground, water, or fishery of the owner : see *Hughes v. Buckland*, (1846) 15 M. & W. 316.

Form of indictment.

Proviso as to floating fish.

A person in the act of committing any offence may be apprehended without a warrant.

192, 210

A justice upon good grounds of suspicion proved on oath may grant a search warrant.

Any person to whom stolen property is offered may seize the party offering it.

hard labour ; and it shall be sufficient in any indictment to describe either by name or otherwise the bed, laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill ; Provided that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only.

103. Any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of this Act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law ; and if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this Act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods ; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required, to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law.

24 & 25 VICT. C. 97.

Malicious Damage Act, 1861.

* * * * *

Injuries to Ponds.

Breaking down the dam of a fishery, &c., or mill dam, or poisoning fish.

192, 203,
211

32. Whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool,

shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, . . . or to be imprisoned, . . . and, if a male under the age of sixteen years, with or without whipping⁽¹⁾.

24 & 25 VICT. c. 109.

An Act to amend the Laws relating to Fisheries of Salmon in England.

[6th August, 1861.]

[NOTE.—Throughout this Act the Board of Trade has been substituted for the Home Office and Secretary of State in accordance with the provisions of the Salmon and Freshwater Fisheries Act, 1886.]

[*Preamble.* Repealed by Stat. Law Rev. Act, 1892.]

Preliminary.

1. This Act may be cited for all purposes as the Salmon Fishery Short title.
Act, 1861.
2. This Act shall not extend to Scotland or Ireland, or to the river Tweed, as defined by the Tweed Fisheries Amendment Act, 1859. Application of Act.
3. [Repealed by Stat. Law Rev. Act, 1892. Act was enforced 1st October, 1861.] Commence-
ment of Act.
4. In this Act, unless there is something inconsistent in the context, the words and expressions herein-after mentioned shall have respectively the meanings hereby assigned to them; that is to say, Definition of terms.

“Person” shall include any body of persons, corporate or unincorporate:

“Salmon” shall include all migratory fish of the genus salmon, whether known by the names herein-after mentioned, that is to say, salmon, cock or kipper, kelt, laurel, girling, grilse, botcher, blue cock, blue pole, fork tail, mort, peal, herring peal, May peal, pugg peal, harvest cock, sea trout, white trout, sewin, buntling, guiniad, tubs, yellow fin, sprod, herling, whiting, bull trout, whitling, scurf, burn tail, fry, samlet, smolt, smelt, skirling or scarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other local name:

“Young of salmon” shall include all young of the salmon species,

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⁽¹⁾ The provisions of this section as to poisoning any water apply to salmon rivers; see Salmon Fishery Act, 1873. s. 13.

- brood, gravelling, shed, scad, blue fin, black tip, fingerling, braudling, brondling, or by any other name, local or otherwise :
- “Court” shall include two or more magistrates assembled in petty sessions :
- “Tidal waters” shall include the sea, and all rivers, creeks, streams, and other water as far as the tide flows and reflows :
- “Inland waters” shall mean all waters that are not tidal waters :
- 215 “Dam” shall mean all weirs and other fixed obstructions used for the purpose of damming up water :
- 215 “Fishing weir” (*m*) :
- 215 “Fishing mill dam” shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes (*n*) :
- 215 “Fixed engine” shall include stake nets, bag nets, putts, putchers, and all fixed implements or engines for catching or for facilitating the catching of fish (*o*).

LAW OF FISHING.

Prohibition of certain Modes of destroying Fish.

Penalty on
mixing
poisonous
substances
in rivers.

211

5 (*p*). Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur the following penalties ; (that is to say,)

(1.) Upon the first conviction a penalty not exceeding five pounds :

(*m*) This definition is repealed by the Salmon Fishery Act, 1873, s. 4. *q.v.*, and the term is defined now to mean any erection, structure, or obstruction fixed to the soil either temporarily or permanently across, or partly across, a river or branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish.

(*n*) A dam built solely for milling purposes, and without any contrivances for catching fish, is not a fishing mill-dam as above defined, although it does in fact render it more easy to catch fish than would have been the case if there had been no such dam, and although the owners of the dam have occasionally taken advantage of the facility so afforded for catching fish : *Garnett v. Backhouse*, (1867) L. R. 3 Q. B. 30.

(*o*) See *Thomas v. Jones*, *post*, p. 254. The Salmon Fishery Act, 1865, s. 39, and the Salmon Fishery Act, 1873, s. 4, have extended the meaning to include any net or other instrument for taking fish fixed to the soil or made stationary in any other way, not being a fishing weir or fishing mill-dam, or any net placed or suspended in any inland or tidal waters unattended by the owner or any person duly authorised by the owner to use the same for catching salmon, and all engines, devices, machines, or contrivances, whether floating or otherwise, for placing or suspending such nets or maintaining them in working order or making them stationary.

(*p*) See also s. 7 of Freshwater Fisheries Act, 1884, as to lime and other injurious substances.

- (2.) Upon the second conviction a penalty (*q*) not exceeding ten pounds, and a further penalty not exceeding two pounds for every day during which such offence is continued :
- (3.) Upon the third or any subsequent conviction, a penalty (*r*) not exceeding twenty pounds a day for every day during which such offence is continued, commencing from the date of the third conviction :

But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the Court before whom he is tried that he has used the best practicable means, within a reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters ; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this Act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalize any act or default that would but for this Act be deemed to be a nuisance or otherwise be contrary to law.

6. Where any proceedings are instituted by any complainant against any person for the recovery of any penalties alleged to have been incurred by him under the last preceding section, if such person, herein-after referred to as "the defendant," on appearing before the justices constituting the Court by which he is to be tried in pursuance of this Act, alleges, by way of defence, that he has used the best practicable means, within a reasonable cost, to render such matter harmless, and proves to the satisfaction of the Court that in the event of the complaint being decided against him the expense of permanently preventing the matter complained of would, exclusive of costs, exceed one hundred pounds, and gives security, to be approved by such Court, duly to prosecute his appeal and to abide the event thereof, all proceedings before the justices shall be stayed, and it shall be lawful for such complainant to bring an action in one of Her Majesty's Superior Courts of Law at Westminster against the defendant ; and the plaintiff in such action shall deliver to the defendant an issue or issues whereby the question whether he had used the best practicable means, within a reasonable cost, to render such matter harmless may be tried ; and the form of such issue or issues, in case of dispute, or in the case of nonappearance of the defendant, shall be settled by the Court in which the action is brought, and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such Court, or as near thereto as circumstances admit.

Power to have question under preceding section decided by jury.

211

(*q*). It must be 2*l*. 10*s*. to 10*l*. : Salmon Fishery Act, 1873, s. 18. 5.

(*r*). It must be 5*l*. to 10*l*. : Salmon Fishery Act, 1873, s. 18. 5.

Effect of issue.
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7. The verdict of the jury on such issue shall, unless the Court before which the same is tried orders a new trial, be conclusive as to the questions involved in any subsequent proceedings that may be had for the recovery of any penalties in pursuance of the said section, and any costs that may have been incurred before the justices by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

Penalty on
fishing with
lights, spears,
&c.

212. 214

8 (s). No person shall do the following things or any of them; that is to say,

- (1.) Use any light for the purpose of catching salmon :
- (2.) Use any *otter, lath or jack (t), wire or snare*, spear, gaff, stroke-hall, snatch, or other like instrument (*u*) for catching *or killing* salmon :
- (3.) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the Court before whom he is tried that he intended at the time to catch *or kill* salmon by means thereof :

And any person acting in contravention of this section shall incur a penalty (*r*) not exceeding five pounds, and shall forfeit any instruments used by him or found in his possession in contravention of this section ; but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line (*y*).

Penalty on
using roe as
a bait.

212

9 (s). No person shall do the following things or any of them; that is to say,

- (1.) Use any fish roe for the purpose of fishing :
- (2.) Buy, sell, or expose for sale, or have in his possession, any salmon roe :

And any person acting in contravention of this section shall for each offence incur a penalty (*z*) not exceeding two pounds, and shall forfeit all salmon roe found in his possession ; but this section shall not apply

(s) Sections 8 and 9 apply to trout and char in all waters to which the Fresh-water Fisheries Act, 1878, applies : Sects. 3—5 of Act, *post*, p. 341. As to trout in a salmon river situate in a fishing district which is subject to a board of conservators appointed under the Salmon Fisheries Act, 1865, see sect. 64 of that Act.

(t) For definition of otter, lath or jack, strokehall or snatch, see Salmon Fishery Act, 1873, s. 4.

(u) A fishing net with an illegally small mesh is not a like instrument to a snare, and consequently its possession, although with the intention of catching salmon, is not an offence punishable by the Salmon Fishery Acts, 1861 to 1873 : *Jones v. Davies*, [1898] 1 Q. B. 405.

(x) Second offence penalty must be 2*l.* 10*s.* to 5*l.* Third offence penalty must be 5*l.* or imprisonment with or without hard labour for one to six months, and forfeit of license if a licensee : Salmon Fishery Act, 1865, ss. 56, 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(y) Printed as amended by the Salmon Fishery Act, 1873, s. 18.

(z) Second offence penalty must be 1*l.* to 2*l.* Third offence penalty must be 2*l.* or imprisonment with or without hard labour for one to six months, and if a licensee forfeit of license : Salmon Fishery Act, 1845, ss. 56, 57 ; Salmon Fishery Act, 1873, s. 18 (5).

to any person who uses or has in his possession salmon roe for artificial propagation or other scientific purposes, or gives any reason satisfactory to the Court by whom he is tried for having the same in his possession.

10. No person shall take or attempt to take salmon with any net having a mesh of less dimensions than two inches in extension from knot to knot (the measurement to be made on each side of the square), or eight inches measured round each mesh when wet; and any person acting in contravention of this section shall forfeit all nets and tackle used by him in so doing, and shall for each offence incur a penalty not exceeding five pounds (*a*); and the placing two or more nets behind or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the provisions of this section with respect to the mesh of nets, shall be deemed to be an act in contravention of this section (*b*).

Penalty on
using certain
nets.

213

11(c). No fixed engine (*d*) of any description shall be placed or used for catching or for the purpose of facilitating the catching of salmon, or detaining or obstructing the free passage of salmon in any inland or tidal waters; and any engine placed or used in contravention of this section may be taken possession of or destroyed (*e*); and any engine so placed or used, and any salmon taken by such engine, shall be forfeited, and, in addition thereto, the owner (*f*) of any engine placed or used in contravention of this section shall, for each day of so placing or using the same, incur a penalty not exceeding ten pounds (*g*); and for the purposes of this section, a net that is secured by anchors, or otherwise temporarily fixed to the soil (*h*), shall be deemed to be a fixed

Penalty on
placing or
fixing fixed
engines.

218

(*a*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*; third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*b*) A trammel net is one net, and not two or more nets placed behind each other: *Dodd v. Armour*, (1867) 31 J. P. 773. See also *post*, p. 321, 322.

(*c*) Printed as amended by Salmon Fishery Act, 1873, s. 18.

(*d*) For examples of fixed engines, see *Gore v. Special Commissioners for English Fisheries*, (1871) L. R. 6 Q. B. 561; *Holford v. George*, (1868) L. R. 3 Q. B. 639; *Birch v. Turner*, (1865) 29 J. P. 37; and see sect. 4, *ante*.

(*e*) Any person may take possession of and destroy illegal engines under this section. The right so to do is not limited to conservators or overseers appointed under sect. 33 of this Act: *Williams v. Blackwall*, (1863) 2 H. & C. 33.

(*f*) A net used in contravention of this section may be presumed to be in the ownership of persons in whose possession it is found: *Vance v. Frost*, (1894) 58 J. P. 398.

(*g*) Second offence penalty must be 2*l.* 10*s.* to 10*l.*; third offence, 5*l.* to 10*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*h*) Three nets six yards in length and one yard sixteen inches deep were set twelve yards apart, and extended to near the middle of the river. They were fixed at one end to a stone on the bank, and at the other end the net was kept up by corks, with lead to keep them down. The net gave way as soon as the salmon touched it, and the fish being entangled in it died. Such a net was held in 1864, by Crompton, Mellor, and Shee, J.J., not to be a fixed engine within the meaning of

engine, but (*i*) this section shall not affect any ancient right or mode of fishing as lawfully exercised at the time of the passing of this Act by any person by virtue of any grant or charter or immemorial usage (*k*); Provided always that nothing in this section contained shall be deemed to apply to fishing weirs or fishing mill dams (*l*).

Penalty on
using certain
dams for
catching
salmon.

213, 216

12. The following regulations shall be observed with respect to dams :

(1.) No dam except such fishing weirs and fishing mill dams as are lawfully in use at the time of the passing of this Act, by virtue of a grant or charter or immemorial usage, shall be used for the purpose of catching or facilitating the catching of salmon (*m*) :

1. Any person catching or attempting to catch salmon in contravention of this section shall incur a penalty (*n*) not exceeding five pounds for each offence, and a further penalty not exceeding one pound for each salmon which he catches :

this section : *Thomas v. Jones*, (1864) 5 B. & S. 916 ; but this was before the Salmon Fishery Act, 1861, where the definition of fixed engine was amended. Consequently in 1866 it was held that a net secured at one end to a pole temporarily fixed to the soil on the edge of the shore was a fixed engine ; see *Olding v. Wild*, (1866) 14 L. T. 402.

(*i*) "The true construction of the exception in this section is," said Blackburn, J., "that it only applies to individual rights of property belonging to individuals lawfully exercised at the time of the passing of the Act" ; see *Bovins v. Bird*, (1865) 12 L. T. 304. Consequently fishing by stake nets for salmon in tidal waters, where all the King's subjects have a right to fish in the ordinary way, is not permitted by individual members of the public.

(*k*) It is the intention of the Legislature to preserve by this section existing rights, however acquired : *Rolle v. Whyte*, (1868) L. R. 3 Q. B. 286. The use of putchers and stop nets for a period of forty-five years up to 1862 does not raise a conclusive presumption of law that they have been used from time immemorial and are not of recent origin : *Holford v. George*, (1868) L. R. 3 Q. B. 639.

(*l*) To constitute an offence against this section the engine used must be used for the purpose of catching salmon. So where a net was fixed to the soil in tidal waters within the limits of a salmon fishery district, but was so placed for the purpose of catching mullet and fish other than salmon, it was held by Mellor and Lush, JJ., that no offence had been committed under this section : *Watts v. Lucas*, (1871) L. R. 6 Q. B. 226. In such cases it is a question of intention, which must be gathered from the conduct of defendant : *Davies v. Evans*, Times, 22nd February, 1902.

(*m*) A fishing mill-dam erected between 1741 and 1751 in a river above the flow of the tide, and where the river was not navigable, which for sixty years before the passing of this Act had been used in substantially the same way as it was used at the time of the passing of this Act, was held in *Lord Leconfield v. Lord Lonsdale*, (1869) L. R. 5 C. P. 657, to have been lawfully in use at the time of the passing of this Act, although no grant could be shown, but only evidence consistent with the existence of a grant from all the proprietors whose interests could be affected by the fishing mill-dam.

(*n*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and 10*s.* for each salmon ; third offence, 5*l.*, and 1*l.* for each salmon : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18.

2. All traps, nets, and contrivances used in or in connexion with the dam for the purpose of catching salmon shall be forfeited :
3. All salmon caught in contravention of the above prohibition shall be forfeited :

And no fishing weir (*v*), although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have therein such free gap as is hereinafter mentioned ; and no fishing mill dam, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have attached thereto a fish pass of such form and dimensions as shall be approved of by the Board of Trade, nor unless such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down such pass, but so nevertheless that such pass shall not be larger nor deeper than requisite for the above purposes.

(2.) (*p*) No person shall catch or attempt to catch, except by rod and line, any salmon in the head race or tail race of any mill, or within fifty yards below any dam, unless such mill or dam has attached thereto a fish pass of such form and dimensions as may be approved by the Board of Trade, and such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down it (*q*) ; and if any person acts in contravention of the foregoing provision,

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1. He shall incur a penalty (*r*) not exceeding two pounds for each offence, and a further penalty not exceeding one pound for every salmon so caught :
2. He shall forfeit all salmon caught in contravention of this section, and all nets or other instruments used or placed for catching the same.

13. Where salmon or the young of salmon are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for supplying any navigable canal, the company or persons having the control over such artificial channel shall, within six months after the commencement of this Act, put up and shall maintain, at their own costs and charges, a grating or gratings across such channel, for the purpose of preventing

Penalty on company or person not erecting gratings to prevent the descent of salmon into artificial streams.

219

(*v*) That is, such weirs as come within s. 27 : *Rolle v. Whyte*, (1868) L. R. 3 Q. B. 286.

(*p*) Now the distance is fifty yards above and one hundred yards below ; see Salmon Fishery Act, 1873, s. 17.

(*q*) It is a breach of this section to catch fish at a dam built solely for milling purposes ; see *Garnett v. Buckhouse*, (1867) L. R. 3 Q. B. 30, at p. 41 ; see also *Moulton v. Wilby*, (1863) 2 H. & C. 25.

(*r*) Second offence penalty must be 1*l.* to 2*l.*, and 10*s.* to 1*l.* for each salmon ; third offence, 2*l.*, and 1*l.* for each salmon : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18.

the descent of the salmon or the young of salmon, and such grating or gratings shall be placed in such form and manner as may be approved by one of the inspectors in this Act mentioned; and any company or persons failing to put a grating or gratings in cases where they are required to do so by this section shall incur a penalty (s) not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section: and any such company or person failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues: Provided always that no such grating shall be so placed as to interfere with the passage of boats on any navigable canal (t).

Prohibition of the Destruction of Unseasonable Fish.

Penalty on
taking un-
clean fish.

224

14(u). No person shall do any of the following things: that is to say,

- (1.) Wilfully take, *kill or injure or attempt to take*, any unclean or unseasonable salmon (x);
- (2.) Buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon (x), or any part thereof:

And any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1.) He shall forfeit any fish taken, bought, sold, or exposed for sale, or in his possession;
- (2.) He shall incur a penalty not exceeding five pounds (y) *for each such offence, and a further penalty of one pound in respect of each fish taken, sold, or exposed for sale, or in his possession:*

But this section shall not apply—

- (1.) To any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury:
- (2.) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes.

15. No person shall do the following things or any of them; that is to say,

Penalty on
taking the
young of
salmon.

220, 224

(s) Second offence must be 2*l.* 10*s.* to 5*l.*, and 10*s.* to 1*l.* per day for not maintaining; third offence, 5*l.*, and 1*l.* per day for not maintaining: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(t) See also Salmon Fishery Act, 1873, s. 59.

(u) Printed as amended by the Salmon Fishery Act, 1873, s. 18.

(x) Salmon includes trout and char; see Salmon Fishery Act, 1873, s. 18 (8).

(y) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and 10*s.* to 1*l.* for each salmon; third offence, 5*l.*, and 1*l.* for each salmon; or imprisonment with or without hard labour for one to six months, or, if a licensee, forfeit of license: Salmon Fishery Act, 1865, ss. 56, 57; Salmon Fishery Act, 1873, s. 18 (5).

- (1.) Wilfully take or destroy the young of salmon ;
- (2.) Buy, sell, or expose for sale, or have in his possession, the young of salmon (z) ;
- (3.) Place any device for the purpose of obstructing the passage of the young of salmon ;
- (4.) Wilfully injure the young of salmon ;
- (5.) Wilfully disturb any spawning bed, or any bank or shallow on which the spawn of salmon may be :

And any person acting in contravention of this section shall incur the following penalties ; that is to say,

- (1.) He shall forfeit all the young of salmon found in his possession ;
- (2.) He shall forfeit all rods, lines, nets, devices, and instruments used in committing any of the above offences ;
- (3.) He shall for each offence pay a penalty (a) not exceeding five pounds ;

But nothing herein contained shall apply to any person who may have obtained such young of salmon for artificial propagation or other scientific purposes, and nothing herein contained shall prejudice the legal right of any owner to take materials from any stream.

16. If any person wilfully disturbs or attempts to catch salmon when spawning, or when on or near their spawning beds, he shall for each offence incur a penalty not exceeding five pounds (b) ; but this section shall not apply to any person who may catch or attempt to catch salmon for the purposes of artificial propagation or other scientific purposes.

Penalty on disturbing fish when spawning.

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Restrictions as to Times of Fishing.

17. No person shall fish for, catch, or attempt to catch or kill salmon between the days hereinafter mentioned (which interval is herein referred to as the close (c) season) ; that is to say, between the first day of September and the first day of February following, both inclusive, except only that it shall be lawful to fish with a rod and line between the first day of September and the first day of November following, both inclusive ; and any person acting in

Close time.

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(z) A person who whilst fishing for trout caught a number of samlets was held to have committed no offence against this section when he proved that he did not know the difference between samlets and trouts, and had no intention of taking or having samlets in his possession : *Hopton v. Thirwall*, (1863) 9 L. T. 327. A person may be convicted of an offence against the Salmon Acts for having young salmon, although the young salmon were found on him by a person who had no right to search him : *Jones v. Owens*, (1870) 34 J. P. 759.

(a) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and third offence 5*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(b) Second offence penalty must be 2*l.* 10*s.* to 5*l.* ; third offence, 5*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(c) See explanation of close season in Salmon Fishery Act, 1873, s. 4.

contravention of this section shall forfeit any salmon caught by him, and shall in addition thereto incur a penalty (*d*) not exceeding five pounds, and a further penalty not exceeding two pounds in respect of each salmon so caught (*e*).

18. *Power of Home Office to extend or vary close season.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

19. *Penalty on selling Fish during Close Time.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

Removal of
fixed engines
during close
time.

221

20. The proprietor or occupier of every fishery (*f*) for salmon shall, within thirty-six hours after the commencement of the close season (*g*), cause to be removed and carried away from the waters within his fishery the inscales, hecks, tops, and rails of all cruives, boxes, or cribs, and all planks and temporary fixtures used for taking or killing salmon, and all other obstructions to the free passage of fish in (*h*) or through the cruives, cribs, and boxes within his fishery ; and if any proprietor or occupier omits to remove or carry away in manner aforesaid any things hereby required to be removed and carried away he shall incur the following penalties ; (*i*) (that is to say,

- (1.) He shall forfeit all the engines or other things that are not removed and carried away in compliance with this section ;
- (2.) He shall, for every day during which he suffers such things to remain unremoved beyond the period prescribed by this Act, pay a sum not exceeding ten pounds.

Weekly close
time.

221

21. No person shall fish for, catch, or kill by any means other than a rod and line, any salmon between the hour of twelve of the clock at noon on Saturday and the hour of six of the clock on Monday morning ; and any person acting in contravention of this section shall

(*d*) On any conviction nets and movable instruments are forfeited, and second offence penalty is 2*l.* 10*s.* to 5*l.*, and 1*l.* to 2*l.* for each salmon ; third offence, 5*l.* and 2*l.* per salmon or imprisonment with or without hard labour for one to six months, and if a licensee forfeiture of licence : Salmon Fishery Act, 1865, ss. 56, 57, 58 ; Salmon Fishery Act, 1873, s. 18 (5).

(*e*) Any net used is also forfeited ; see Salmon Fishery Act, 1865, s. 58.

(*f*) The occupier of a fishing mill dam is the owner of a fishery within the meaning of this section and must remove all obstructions to the passage of fish, and does not by removing the "hecks" without the "hatches" comply with this section : *Hodgson v. Little*, (1863) 8 L. T. 358.

(*g*) For meaning of close season, see Salmon Fishery Act, 1873, s. 4.

(*h*) Where a dam has been used as a fishing mill dam up to a date subsequent to the passing of this Act, but the use of it for fishing purposes was then abandoned and all appliances removed, it ceased to be a fishing mill dam within this Act, and the occupier is not bound to remove obstructions to the free passage of fish as required by this section : *Rossiter v. Pike*, (1878) 4 Q. B. D. 24.

(*i*) Second offence penalty must be 2*l.* 10*s.* to 10*l.*, and third offence 5*l.* to 10*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

forfeit all fish taken by him, and any net (*k*) or moveable instrument used by him in taking the same, and in addition thereto shall incur a penalty (*l*) not exceeding five pounds, and a further penalty not exceeding one pound in respect of each fish so taken between twelve of the clock at noon on Saturday and six of the clock on Monday morning; but nothing in this section contained shall compel the owner of any putts or putchers to remove or draw up the same during such time as is mentioned in this section, or subject him to a penalty, so that he lets down a net in such manner or uses such other device as the Board of Trade approves for the purpose of preventing salmon passing into the putts or putchers during such time as aforesaid (*m*).

22. The proprietor or occupier of every fishery shall, between twelve of the clock at noon on Saturday and six of the clock on the Monday morning following, maintain a clear opening, of not less than four feet in width from the bottom to the top, through all cribs, boxes, or cruives used for taking salmon within his fishery, so that a free space of that width is effectually secured for the passage of fish up and down through each box, crib, or cruive, whether used for the purpose of fishing or not; and shall, for the purpose of maintaining such opening, remove the inscales and rails of all such boxes, cribs, or cruives; and any person acting in contravention of this section shall incur the following penalties: (*n*)

- (1.) He shall for each offence pay a sum not exceeding five pounds, and a further penalty not exceeding one pound for each fish so taken.
- (2.) He shall forfeit every fish caught in contravention of this section.

Fish Passes.

23 (*o*). Any proprietor of a fishery or a board of conservators, with the written consent of the Board of Trade, may attach to every dam existing at the time of the passing of this Act a fish pass, of such form and dimensions as the Board of Trade may approve, so that no injury be done to the milling power or to the supply of water to or of any navigable river, canal (*p*), or other inland navigation by such

A free passage to be left through cribs or traps during weekly close time.

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Proprietor with consent of Board of Trade may attach fish passes to existing dams.

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(*k*) Fishing for salmon with a net during prohibited hours renders the net liable to forfeiture, although no fish are in fact caught: *Ruther v. Harris*, (1876, 1 Ex. D. 97.

(*l*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and 10*s.* to 1*l.* for each fish; third offence, 5*l.* and 1*l.* per fish: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*m*) By the Salmon Fishery Law Amendment Act, 1879, s. 1, these provisions as to the weekly close season do not apply to putts and putchers. The annual close season for this mode of fishing commences on the 1st of September and ends on the 1st of May.

(*n*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and 10*s.* to 1*l.* for each fish; third offence, 5*l.* and 1*l.* per fish: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*o*) Printed as amended by Salmon Fishery Act, 1873, s. 53.

(*p*) See also Salmon Fishery Act, 1873, s. 50.

fish pass ; and any person obstructing any person legally authorized in erecting or doing any necessary act to erect or maintain such fish pass shall incur a penalty (*q*) not exceeding ten pounds for each act of obstruction ; and any person injuring such fish pass shall pay the expense of repairing the injury (*r*), such expense to be recovered in a summary manner, and, in addition thereto, if such injury is wilful, shall incur a penalty (*s*) not exceeding five pounds ; and any person doing any act for the purpose of preventing salmon from passing through a fish pass, or taking any salmon in its passage through the same, shall incur a penalty (*t*) not exceeding five pounds for a first offence, and not exceeding ten pounds for each subsequent offence, and shall forfeit any salmon taken by him in contravention of this section, and any instrument used by him in taking the same : Provided that if any injury is done to any dam by reason of the affixing of a fish pass in pursuance of this section, any person sustaining any loss thereby may recover compensation for such injury in a summary manner from the person or body of persons by whom such fish pass has been affixed (*u*).

Notice
required
before Board
of Trade gives
consent.

24 (*x*). The Board of Trade shall not give their consent to the attachment by a proprietor or a board of conservators of a fish pass to any dam, in pursuance of the last preceding section, unless such proprietor or board of conservators proves, to the satisfaction of the Board of Trade, that he has served notice on the owner of such dam of his intention to apply for such consent, and, at the same time, has furnished him with plan and specification of the fish pass which he proposes to erect, a reasonable time before his application ; and it shall be lawful for such owner to urge any objections he may think fit to the Board of Trade against their giving their consent, and the Board of Trade shall take any objections so made into consideration before they give their consent to the attachment of the fish pass.

Fish passes to
be attached to
future dams.

217

25. Every person who, in waters where salmon are found, constructs a new dam, or raises or alters, so as to create increased obstruction to fish, a dam already constructed, shall attach and maintain attached thereto in an efficient state a fish pass of such form and dimensions as may be determined by the Board of Trade,

(*q*) Second offence penalty must be 2*l.* 10*s.* to 10*l.*, and third offence £5 to 10*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(*r*) See also Salmon Fishery Act, 1873, s. 48.

(*s*) Second offence penalty must be 2*l.* 10*s.* to 5*l.* ; third offence, 5*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(*t*) Second offence penalty, 2*l.* 10*s.* to 10*l.* ; third offence, 5*l.* to 10*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(*u*) Proceedings for the recovery of the compensation must be commenced within two years after the fixing of the fish pass ; see Salmon Fishery Act, 1865, s. 59.

(*x*) Printed as amended by Salmon Fishery Act, 1873, s. 53.

and if he do not, such person shall incur a penalty (*y*) not exceeding five pounds; and it shall be lawful for the Board of Trade to cause to be done any work by this section required to be done by such person, and to recover the expense of doing the same in a summary manner from the person in default; but this section shall not authorize anything to be done which may injuriously affect any navigable river, canal, or inland navigation, nor shall anything in this or the last preceding section prevent any person from removing a fish pass for the purpose of repairing or altering a dam, so that within a reasonable time he restore such fish pass in as an efficient a state as it was before he removed the same (*z*).

26 (*a*). . . . The sluices, if any, for drawing off the water which would otherwise flow over *any* dam shall be kept shut *on Sundays and* at all times when the water is not required for milling purposes in such manner as to cause such water to flow through the fish pass, *if any, or over the dam*; and any person making default in complying with the requisitions of this section shall incur a penalty not exceeding five shillings per hour for every hour during which such default continues; but this section shall not preclude any person from opening a sluice for the purpose of letting off water in cases of flood, or for milling purposes, or when necessary for the purposes of navigation, or for cleaning or repairing any dam or mill or the appurtenances thereof.

Supply of
water to fish
passes.

218

Restrictions as to Fishing Weirs.

27. Where any fishing weir extends more than halfway across any stream (*b*) at its lowest state of water, it shall have a free gap or opening in accordance with the regulations following, unless otherwise authorized by the Board of Trade, under the powers of this Act; that is to say,

Construction
of free gaps.

216

- (1.) The free gap shall be situate in the deepest part of the stream between the points where it is intercepted by the weir:
- (2.) The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir:
- (3.) The bottom of the gap shall be level with the natural bed of the stream above and below the gap:
- (4.) The width of the gap in its narrowest part shall be not less than one tenth part of the width of the stream; provided always, that such gap shall not be required to be wider than forty feet, and shall not in any case be narrower than three feet.

(*y*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*; third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*z*) See also sect. 46 of Salmon Fishery Act, 1873.

(*a*) Printed as amended by Salmon Fishery Act, 1873, s. 53.

(*b*) See *Rolle v. Whyte*, (1868) L. R. 3 Q. B. 286.

Enforcing free
gaps in fishing
weirs.

216

28. The following rules shall be observed for the purpose of enforcing efficient free gaps in fishing weirs : that is to say,

- (1.) Where a weir is without a legal free gap at the time of the commencement of this Act the owner of such weir shall within twelve months after the commencement of this Act make such a gap, and if he does not he shall incur a penalty not exceeding five pounds for every day after the expiration of such period of twelve months during which he does not make such gap :
- (2.) Where a free gap has been made in a weir, but the same is not maintained in accordance with this Act, the owner of such weir shall incur a penalty not exceeding one pound a day for each day he is in default :
- (3.) No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap ; if it is, the person making the same shall incur a penalty (c) not exceeding five pounds, and a further penalty of one pound a day until he restores the bed of the river to its original state :

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- (4.) No person shall place any obstruction, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year ; and any person placing any obstruction, using any contrivance, or doing any act in contravention of the regulation lastly herein-before contained shall incur a penalty (d) not exceeding five pounds for the first offence, and not exceeding ten pounds for each subsequent offence ; but this last regulation shall not apply to a temporary bridge or board used for crossing the free gap, and taken away immediately when a person has crossed the same.

Construction
of boxes and
cribs in fishing
weirs and
fishing mill
dams.

216, 218

29. The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs and fishing mill dams ; that is to say,

- (1.) The upper surface of the sill shall be level with the bed of the river :
- (2.) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed and shall be placed perpendicularly :

(c) Second offence penalty must be 2*l.* 10*s.* to 5*l.* and 10*s.* to 1*l.* per day ; third offence, 5*l.* and 1*l.* per day : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

(d) Second offence penalty must be 2*l.* 10*s.* to 10*l.* ; third offence, 5*l.* to 10*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

And the owner of any fishing weir or fishing mill dam that has attached thereto any box or crib in contravention of this Act shall bring the same into conformity with this Act within six months after the commencement of this Act; and he shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section; and any owner failing so to maintain the same shall incur a penalty *(e)* not exceeding one pound for every day during which such failure continues.

30. There shall not be attached to any box or crib in any fishing weir or fishing mill dam any spur or tail wall, leader, or outrigger of a greater length than twenty feet from the upper or lower side of such box or crib; and if any box or crib in any fishing weir or fishing mill dam has any walls, leaders, or outriggers in contravention of this section, the owner of the weir or fishing mill dam shall incur a penalty *(f)* not exceeding one pound for every day during the continuance thereof.

Construction of spur walls in fishing weirs or fishing mill dams.
216, 218

CENTRAL AUTHORITY.

31. The general superintendence of the salmon fisheries throughout England shall be vested in the Board of Trade, and it shall be lawful for the Board of Trade to appoint two inspectors of fisheries for three years, to assign to them their duties, and to pay to them such salaries as may from time to time be determined by the treasury.

General superintendence of fisheries by Board of Trade.

The Board of Trade may from time to time remove the said inspectors, and appoint other persons in their stead.

32. The Board of Trade shall annually lay before Parliament reports from the inspectors, which reports shall contain as far as may be practicable a statistical account of the fisheries, with such other information as may be collected, and suggestions offered for their regulation and improvement *(g)*.

Annual reports of inspectors to be laid before Parliament.
186

33. It shall be lawful for the justices of the peace assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of salmon, and enforcing for that purpose the provisions of this Act within the limits of the jurisdiction of such justices *(h)*.

Justices at Sessions to appoint conservators of rivers.

(e) Second offence penalty must be 10s. to 1*l.*; third offence, 1*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(f) Second offence penalty must be 10s. to 1*l.*; third offence, 1*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(g) The provisions of this section as amended by the Salmon and Freshwater Fisheries Act, 1886, extend and apply to all salmon, freshwater and sea fisheries over which the Board of Trade, under the Salmon and Freshwater Fisheries Acts, have jurisdiction and control; see Salmon and Freshwater Fisheries Act, 1886, s. 6.

(h) This power is now transferred to the county councils by the Local Government Act, 1888, s. 3, sub-s. xiii.

Justices may grant a warrant to enter suspected places.

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34. It shall be lawful for any justice of the peace, upon an information on oath that there is probable cause to suspect any breach of the provisions of this Act to have been committed on any premises, or any salmon illegally taken or any illegal nets or other engines to be concealed on any premises, by warrant under his hand and seal, to authorize and empower any inspector, water bailiff, conservator, constable, or police officer to enter such premises for the purposes of detecting such offence, or such concealed fish, at such time or times, in the day or night, as in such warrant may be mentioned, and to seize all illegal engines, or any salmon illegally taken, that may be found on such premises; provided that no such warrant shall continue in force for more than one week from the date thereof (*i*).

LEGAL PROCEEDINGS.

35. *Recovery of Penalties.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

Offences on rivers may be tried in county on either side.

36. Where any offence under this Act is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions or petty sessions, such offence may be prosecuted before any justice or justices of the peace in either of such counties or districts.

Offences committed on sea coast, where to be tried.

37. Any offence committed under this Act, on the sea coast or at sea, beyond the ordinary jurisdiction of any justice of the peace, shall be deemed to have been committed within the body of any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly.

Saving clause for dredging.

38. Nothing in this Act contained shall prejudice the legal right of any conservators, directors, commissioners, undertakers, persons, or body of persons corporate or unincorporate to dredge, scour, cleanse, or improve any navigable river, canal, or other inland navigation.

REPEAL OF ACTS.

39. *Repeal of Acts.*—[Repealed by Stat. Law Rev. Act, 1875, 38 & 39 Vict. c. 66.]

SCHEDULE.

Repealed by Stat. Law Rev. Act, 1875.

(*i*) In this section the word "salmon" includes trout, char, and all freshwater fish; and the justices have power to authorise the search of any premises in cases of offences against the Freshwater Fisheries Act, 1878, as well as under this Act: see the Freshwater Fisheries Act, 1878, s. 9, *post*, p. 342.

26 VICT. c. 10.

An Act for Prohibiting the Exportation of Salmon at Certain Times.

[20th April, 1863.]

Preamble recites 24 & 25 Vict. c. 109; 25 & 26 Vict. c. 97; 22 & 23 Vict. c. 70.

1. This Act may be cited for all purposes as "The Salmon Acts Amendment Act, 1863." Short title.

2. No part of the United Kingdom, however situated with regard to any other part, shall be deemed for the purposes of this Act to be parts beyond seas. "Parts beyond seas" defined.

3. No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to parts beyond seas. Export of unclean or unseasonable salmon, or salmon caught at certain times prohibited.

All salmon exported or entered for exportation in contravention of this section shall be forfeited, and the person exporting or entering the same for exportation shall be subject to a penalty not exceeding five pounds in respect of each salmon so exported or entered for exportation.

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The burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond seas between the third day of September and the *thirtieth day of April* following is not so entered in contravention of this Act shall lie on the person entering the same for exportation (*k*).

4. All penalties under this Act may be recovered in England except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fishery Act, 1861; in Ireland as penalties under the Act passed in the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, intituled *An Act to Regulate the Irish Fisheries*; in Scotland, except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fisheries (Scotland) Act, 1862; and within the limits of the said Tweed Fisheries Act, in manner prescribed by "The Tweed Fisheries Act, 1857." Recovery of penalties.
22 & 23 Vict. c. lxx.
24 & 25 Vict. c. 109.
5 & 6 Vict. c. 106.
20 & 21 Vict. c. cxlviii.

28 & 29 VICT. c. 121.

[NOTE.—Throughout this Act the Board of Trade has been substituted for the Home Office and Secretary of State in accordance with the provisions of the Salmon and Freshwater Fisheries Act, 1886.]

An Act to amend "The Salmon Fishery Act, 1861."

[5th July, 1865.]

Preamble recites 24 & 25 Vict. c. 109.

Preliminary.

1. This Act may be cited for all purposes as "The Salmon Fishery Act, 1865," and this Act and the Salmon Fishery Act, 1861, Short title.

(*k*) Printed as amended by the Salmon Acts Amendment Act, 1870, s. 3.

may be cited together as the "Salmon Fishery Acts, 1861 and 1865."

Construction
of Act.

2. This Act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Act, 1861.

Definition of
terms.

3. In this Act and the Salmon Fishery Act, 1861, the following words shall have the meanings herein-after assigned to them, unless there be something in the subject or the context repugnant to such construction; that is to say,

"River" shall include such portion of any stream or lake, with its tributaries (*l*), and such portion of any estuary, sea, or sea coast, as may from time to time be declared, in manner herein-after provided, to belong to such river:

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"Salmon river" shall mean any river as above defined frequented by salmon or young of salmon:

"Quarter sessions" shall include "general sessions:"

Any riding, division, or liberty of a county having a separate Court of quarter sessions shall, for the purposes of this Act, be deemed to be a county.

Appointment of Conservators.

[NOTE.—The powers of justices are now transferred to the County Councils by the Local Government Act, 1888, s. 3, sub-s. 13.]

Power to
justices of
county to
apply for
formation of
fishery
districts.

203

4. The justices of a county at any Court of quarter sessions held after the passing of this Act (due notice having been previously given according to the practice of the said sessions) may, by writing under the hand of their chairman, apply to the Board of Trade to form into a fishery district or districts all or any of the salmon rivers (*m*) lying wholly or partly within their county, and the said Board of Trade may form such district or districts accordingly, and may include in any district so formed any river or rivers, or parts thereof, although not situated in the county on behalf of which the application is made.

Limits of
river and of
fishery district
how settled.

5. The limits of a river shall be defined for the purposes of this Act, and a fishery district shall be formed, by a certificate under the hand of the Board of Trade, describing the limits of the river or district by a reference to a map or otherwise, as to the said Board of

(*l*) A reservoir for the supply of water to towns formed by damming a stream which was a tributary to a stream is not a tributary within the meaning of this section: see *Harbottle v. Terry*, (1882) 10 Q. B. D. 136, 137; *Hall v. Reid*, (1882) 10 Q. B. D. 134, *n.*; *George v. Carpenter*, [1893] 1 Q. B. 505. A stream which runs into a tributary is a tributary: *Evans v. Owen*, [1895] 1 Q. B. 237; *Merricks v. Cadwallader*, (1882) 46 L. T. 29.

(*m*) For the formation of trout and char and freshwater fishery districts, rivers in this section are to mean any river frequented by salmon, trout or char, or freshwater fish. See Freshwater Fisheries Act, 1878, s. 6, and Freshwater Fisheries Act, 1884, s. 2. For the limits of the various districts, see the annual reports of Inspectors of Salmon and Freshwater Fisheries.

Trade may appear expedient, but no such certificate shall be granted unless one month's previous notice of the intention of the said Board of Trade to grant the same, and of the intended limits of the river or district, has been given by advertisement in such newspaper or newspapers published or circulating within the intended limits, and in such daily morning newspaper or newspapers published in London, as may be directed by the said Board of Trade, and when a certificate has been granted a copy shall be advertised in such newspaper or newspapers (o).

6. Where any fishery district lies wholly within any one county, the justices of that county in quarter sessions assembled shall appoint a board of conservators for that district, and shall name the time and place at which the first meeting of any board so appointed is to be held.

Appointment of conservators to district within limits of one county.

204

7. Where a fishery district does not lie wholly within the limits of one county, the justices of any county within which any part of such district lies, assembled at any Court of quarter sessions, may apply to the justices of every other county in that district to appoint at their next Court of quarter sessions a fishery committee of three of their number, to form, with the fishery committee of the like number to be appointed at that sessions by the county making the application, a joint fishery committee for the district.

Committee for fishery district in different counties.

204

8. An application under this Act by the justices of one county to the justices of another, in respect of the appointment of a joint fishery committee, shall be made by the clerk of the peace of the one county sending, within fourteen days after the holding of the sessions at which the application is resolved on, to the clerk of the peace of the other county, by post, a letter requiring the justices of the other county to appoint a fishery committee at their then next ensuing quarter sessions, and it shall be the duty of the clerk of the peace making the application, and of the clerk of the peace of every county to whom such application is sent, to add to the notice required by law to be given of the holding of such last-mentioned sessions a notice of the appointment proposed to be made of a fishery committee.

Application for appointment of joint committee.

204

9. At the quarter sessions mentioned in the application the justices of each county shall appoint a fishery committee of three of their members; and any county neglecting to make such appointment shall be deemed to have concurred in any decision that may be

Appointment of fishery committee.

(o) Under sects. 3, 4 and 5, when the justices of any county in quarter sessions have applied for the formation of any river lying wholly or partly in their county into a fishery district, the Board of Trade has jurisdiction by its certificate to enlarge the limits of the district to any extent, in the same and neighbouring counties, as it in its discretion may think fit: *R. v. Sir George Grey*, (1866) L. R. 1 Q. B. 469; Salmon and Freshwater Fisheries Act, 1886.

arrived at by the fishery committees of the other counties, or of such of them as may appoint a fishery committee.

Notice of
appointment
of fishery
committee.

10. The clerk of the peace of every county shall, as soon as possible after the appointment of a fishery committee by his county, give notice by post to the clerk of the peace of every other county in the district, stating in such notice the names and addresses of the members composing the fishery committee of his county, and the clerk of the peace of the county that made the application for such appointment shall, in the notice sent by him, name a time and place at which the joint fishery committee for such district is to meet.

Proceedings of
joint fishery
committee.

11. The said joint fishery committee, on meeting at the time and place aforesaid, shall elect a chairman, and the chairman elected at the first meeting shall, if he is present at the time appointed for holding any other meeting, be chairman of that meeting; if he is not so present the members present may choose any one of their number present to be chairman of such last-mentioned meeting.

A joint fishery committee may adjourn from time to time and from place to place, and one third of the whole number of members appointed shall be a quorum.

Every question shall be decided by a majority of votes of the members voting on that question, and in the event of an equality of votes at any meeting the chairman shall have a second or casting vote.

The proceedings of a joint committee shall not be invalidated by reason of there being any vacancy or vacancies in their body.

Meeting of
joint fishery
committee.

12. The said joint fishery committee shall proceed to appoint a board of conservators for such district, and shall determine the following matters :

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1. The number of conservators to be appointed as a board :
2. The number of members of the board to be appointed by each county in the district :
3. The names of the first members of the board, distinguishing those who are to be considered as appointed by each county :
4. The time and place at which the first meeting of the said board is to be held :
5. The county by the quarter sessions of which the accounts of the board are to be audited, herein-after referred to as the audit county.

Any member of a joint committee may be appointed member of the board.

Dissolution of
a joint fishery
committee.

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13. When a joint committee have completed their dispositions for the formation of a board of conservators for a district, they shall give notice by post of such dispositions to the clerks of the peace of all the counties in such district, and when such notice has been given the joint committee shall be dissolved.

14. *Ex-officio Members of Board.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

15. The members of a board of conservators shall hold office for one year, and be appointed annually at quarter sessions, and in the case of a board formed by a joint committee in the proportions fixed by that committee. Retiring members shall be eligible for re-appointment; and if at the time when any annual appointment ought to take place no such appointment is made the existing conservators shall remain in office until their successors are appointed.

Tenure of
office by
conservators.
204, 205

Any casual vacancy occurring by death, resignation, or otherwise in the office of conservator may be filled up by the board, and the member chosen to fill such vacancy shall hold his office for such time only as the member vacating would have held the same if no vacancy had occurred.

16. Notice of the first and of every subsequent appointment of a board of conservators, specifying the names and addresses of the persons appointed, shall, in the case of a board appointed by the justices of a single county, be advertised by the clerk of the peace of that county in some newspaper published or circulated in such county, and in the case of a board appointed by a joint committee be advertised by the clerk of the peace of every county in the district in some newspaper published or circulated in that county.

Notice of ap-
pointment of
conservators.

17. After the appointment of a board of conservators in pursuance of this Act in any district the powers of all conservators or overseers for the preservation of salmon, appointed in pursuance of any other Act of Parliament, of charter or custom, and all powers of appointing the same, shall absolutely determine within the limits of the said district.

Cesser of
powers of
existing con-
servators.

18. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the appointment of a board of conservators in any district after the expiration of three calendar months from the date of the advertisement of such appointment in the newspaper, and a copy of the newspaper containing the advertisement of the appointment of a board of conservators shall be received in all courts of justice and in all legal proceedings as evidence of such appointment having been made.

Rules as to
objections and
evidence.

19. Where more than one salmon river (*p*) not included in the same fishery district flows into a common estuary the Board of Trade may define the limits of such estuary, including therein any portion of the adjoining sea or seacoast, and form it into a separate district, and place the whole of such district, either temporarily or permanently, within the jurisdiction of any one or more of the boards having jurisdiction over the salmon rivers (*p*) flowing into

Provisions as
to common
estuary.

(*p*) Means any river frequented by salmon, trout, or char, or freshwater fish; see Freshwater Fisheries Act, 1878, s. 6; Freshwater Fisheries Act, 1884, s. 2.

the estuary, or place such district under the jurisdiction of a board composed of representatives from the other boards, and may require such board or boards to pay a certain proportion of the licence duties received by them to any other board or boards.

20. *Alterations of Fishery District.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

Board of Conservators, and their Officers.

Constitution
of board of
conservators.
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21. A board of conservators shall be a body corporate, having perpetual succession and a common seal, with power to make contracts, and to sue and be sued in a common name.

Proceedings
of board.

22. A board of conservators shall meet for the despatch of business, and shall from time to time make such regulations with respect to the election of a chairman of their meetings, the summoning, notice, place, management, and adjournment of their meetings, and generally with respect to the transaction and management of business, including the quorum of meetings, as they think fit, subject to the following conditions :

- (a.) The first meeting after the formation of the district shall be held at the time and place fixed in a manner provided by this Act :
- (b.) An extraordinary meeting may be summoned at any time, on the requisition of three members of the board :
- (c.) The quorum to be fixed by the board shall consist of not less than three members :
- (d.) Every question shall be decided by a majority of votes of the members voting on that question ; and in the event of an equality of votes the chairman for the time being shall have a second or casting vote.

Appointment
of committees.
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23. A board of conservators may appoint committees of their members, may fix a quorum for each committee, and may lay down rules for its guidance. Every question before a committee shall be decided by a majority of votes of the members voting on that question, and in the event of an equality of votes the chairman for the time being shall have a second or casting vote.

24. *Amendment of Section 18 of Salmon Fishery Act, 1861.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

Vacancies in
board and
defect in
qualification
of members.

25. No act or proceeding of a board of conservators shall be questioned on account of any vacancy or vacancies in their body ; and no defect in the qualification or appointment of any person or persons acting as member or members of such board shall be deemed to vitiate any proceedings of such board in which he or they have taken part.

26. *Evidence of Proceedings at Meeting.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

27. A board of conservators shall have power within their district to do the following things, or such of them as they may in their discretion think expedient; that is to say,

Enumeration
of powers of
board of
conservators

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- (1.) From time to time, by writing under the hand of the acting chairman for the time being of the board, to appoint a sufficient number of water bailiffs and other officers, to assign to them their salaries and duties, and to remove any water bailiff or officer so appointed: Provided always, that nothing herein contained shall prevent the said board of conservators from obtaining the services of additional constables under the Act third and fourth Victoria, chapter eighty-eight, section nineteen, for the purpose of carrying out the provisions of this Act; such constables, when appointed, to have all the powers and privileges of water bailiffs, and to be paid for their services by the said board:
- (2.) To issue such licences for fishing as are provided by this Act:
- (3.) To purchase by agreement, for the purpose only of removal, dams, fishing weirs, fishing mill dams, or fixed engines they may deem it expedient to remove for the benefit of the fisheries in their district:
- (4.) To take legal proceedings (*q*) against persons violating the provisions of the Salmon Fisheries Acts, 1861, 1865, or either of them, or for removing such weirs or other fixed engines as they may be advised are illegal:
- (5.) Generally to execute such works, do such acts, and incur such expenses as they may deem expedient to be executed, done, or incurred for the protection and improvement of the salmon fisheries within their district, the increase of salmon, and the stocking of the waters in their district therewith, but so that it shall not be lawful for a board of conservators to pay to any member of the board any salary, fees, or other remuneration for his acting in any way as a member of or under the board:

Provided that this section shall not authorize anything to be done which may injuriously affect any navigable river, canal, or inland navigation.

28. A board of conservators may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them under the Salmon Fishery Acts, 1861, 1865, with the consent of the

Mortgage of
licence duties.
206

q) For the power of persons other than a board of conservators to take proceedings, see the Fisheries Act, 1891, s. 13. A water bailiff can institute proceedings without the authority of a board of conservators: *Pollock v. Moses*, (1894) 70 L. T. 378, overruling *Anderson v. Hamlin*, (1890) 25 Q. B. D. 221.

Board of Trade, borrow and take up, at interest on the credit of the licence duties authorised to be imposed by them, or of any other property belonging to them, any sums of money necessary for defraying such costs, charges, and expenses; and for the purpose of securing the repayment of any sums of money so borrowed, together with such interest as aforesaid, the board of conservators may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the said duties and property, or any part thereof; and the clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

Audit of
accounts of
board.

29. An account of the receipts and disbursements of every board of conservators, in such form and with such particulars as may be required by the Court of quarter sessions that appoints the board, or in the case of a joint board by the Court of quarter sessions of the audit county, shall be laid annually before such Courts of quarter sessions as aforesaid, and the justices assembled at such Courts may disallow any item that they consider to be illegal.

30. *Power of Water Bailiff for Protection of Fisheries.*—[Repealed by Salmon Fishery Act, 1873, s. 65.]

Order for
entry of water
bailiff on land.

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31. Where it appears to any justice of the peace, on the application of any conservator or water bailiff made on oath, that such conservator or bailiff has good reason to suspect that acts in contravention of the Salmon Fishery Acts, 1861 and 1865, are being or are likely to be done on any land situate on or near to a salmon river, the justice may, by order under his hand, authorise such conservator or bailiff, during a limited period, to be specified in such order, not exceeding twenty-four hours, to enter upon and remain on such land during any hours of the day or night for the purpose of detecting the persons guilty of the aforesaid acts; and no conservator or water bailiff entering or remaining on any land in pursuance of such order shall be deemed to be a trespasser; but this section shall not affect any other powers of search conferred by the Salmon Fishery Acts, 1861 and 1865 (*r*).

Alteration of
fish pass or
free gap.

206. 216,
217

32. On application to the Board of Trade by any board of conservators, setting forth that any fish pass or free gap within their district, under the provisions of the Salmon Fishery Act, 1861, is in their opinion capable of improvement, the said Board of Trade may direct any alteration in the said fish pass or free gap, or may direct a new fish pass or free gap to be made in another site, and the board

(*r*) The powers of the water bailiffs apply to all waters within the limits of the Freshwater Fisheries Act, 1884, as if the words "salmon rivers" included waters frequented by freshwater fish: see Freshwater Fisheries Act, 1884, s. 3, *post*.

of conservators shall defray all costs, charges, and expenses attending the alteration or erection of any such fish pass or free gap, and for the purposes of this section, where a river is divided into separate branches, each branch shall be considered as a separate river: Provided, that no injury shall be done under the exercise of the powers given by this section to the supply of water to or of any navigable river, canal, or other inland navigation.

Licences (s).

33. In any fishery district subject to the control of a board of conservators licences shall be granted at fixed prices to all persons using any rod and line for fishing for salmon (*s*), and in respect of all fishing weirs, fishing mill dams, putts, putchers (*t*), nets, or other instruments or devices, except rods and lines, whereby salmon (*s*) are caught; and the produce of such licences shall be applied in defraying the expenses of carrying into effect in such district the Salmon Fishery Acts, 1861 and 1865 (*u*).

Issue of
licences.
**206, 217, 219,
222, 223**

34 (*x*). The following rules shall be observed with respect to the licences granted in pursuance of this Act, that is to say,

Rules as to
licences.
206, 222, 223

(1.) and (2.) [Repealed by the Salmon Fishery Act, 1873, s. 65. See now sect. 21 of that Act.]

(3.) The approval of the said Board of Trade to a scale of licences for fishing weirs, fishing mill dams, putts, putchers, nets, and other instruments or devices as aforesaid shall not be given for any district unless one month's previous notice of the intention of the Board to apply for such approval has been given by advertisement, stating the scale of licence duties proposed by the conservators, in some one or more public newspaper or newspapers circulating in the district:

(4.) Any person for the time being entitled to an exclusive right of fishing for salmon (*x*) in any river or part of a river may, upon application to the conservators of the district, obtain a general licence; and such general licence shall enable the licensee or any person authorised by him in writing under his hand, without any other licence, to fish for salmon in

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(*s*). Sections 33—37. In the event of the powers conferred by the Freshwater Fisheries Act, 1878, s. 7, being exercised the word "salmon" in these sections shall include "trout and char." A license is required for each rod used: *Combridge v. Harrison*, (1895) 72 L. T. 592.

(*t*) A license is necessary for the use of putts in a salmon fishery, even though they are so constructed as to catch only shrimps and flat fish: *Lyne v. Leonard*; *Lyne v. Fennell*, (1868) L. R. 3 Q. B. 156; and also for any net or device which is capable of catching salmon, although not used for that purpose: *Short v. Bastard*, (1881) 46 J. P. 580; *Hill v. George*, (1880) 44 J. P. 424.

(*u*) Licensees under this section may have the assistance of unlicensed persons to assist with their nets: *Lewis v. Arthur*, (1871) 24 L. T. 66; now see the Salmon Fishery Act, 1873, s. 21 (4).

(*x*) May include trout or char. See Freshwater Fisheries Act, 1878, s. 7.

any legal manner in such river or part of a river, but it shall not be of any validity beyond the limits to which it refers : There shall be paid for such general licence such sum as the conservators may from time to time determine, with the sanction of the said Board of Trade, having regard to the extent and productiveness of the fishery, and to the nature of the instruments or devices used for catching the fish :

- (5.) All persons demanding to purchase licences, and tendering to any person appointed by the Board to distribute the same, the amount of licence duty to be paid under the provisions of this Act, shall be entitled to receive the same without any question or objection whatsoever. But no licence shall confer any right to fish in any place or at any time in or at which the licensee is not otherwise entitled to fish ; nor shall the grant of a licence be held to make any fishing weir, fishing mill dam, putts, putchers, net, or other instrument or device legal that would otherwise be illegal, or to imply any recognition of the legality of any such instrument :
- (6.) All licences granted in pursuance of this Act shall be available only during the fishing season of the year for which they are granted :
- (7.) Licences granted in pursuance of this Act shall be issued by the conservators of each district in such form as may be approved by the Board of Trade, and be distributed in such manner as they may from time to time direct :
- (8.) The conservators of a district shall, on their first appointment, give notice by advertisement in one or more newspaper or newspapers published or circulating in their district of a time, not being less than three months after such appointment, at the expiration of which it will be illegal to fish for salmon in that district without a licence, and shall state in the notice a place or places within their district where licences may be procured ; and the production of a copy of a newspaper containing any such advertisement as aforesaid shall be conclusive evidence, as respects a fishery district, of due notice having been given of the time after which it will be illegal in that district to fish for salmon without licences (*y*).

Penalty on
fishing with
rod without
licence.

35. From and after a time to be appointed as aforesaid in a fishery district any person fishing in that district with a rod and line (*z*) for

214, 222, 223

(*y*) For the meaning of the word "salmon" in sects. 33—37, see 41 & 42 Vict. c. 39, s. 7, *post*, p. 341.

(*z*) Under this section a license is only required by a person who fishes for salmon, trout or char, and anyone who fishes by rod and line for all fish other than those before mentioned does not require a license under this section : *Marshall v. Richardson*, (1889) 60 L. T. 605. Only one rod and line can be used for each license : *Combridge v. Harrison*, (1895) 72 L. T. 592. This decision is

salmon without a proper licence shall be liable to a penalty (*a*) of not less than double the amount to be paid for the requisite licence, and not exceeding five pounds (*b*).

36. From and after a time to be appointed as aforesaid in a fishery district any person using within that district any fishing weir, fishing mill dam, putt (*c*), putcher, net (*d*), or other instrument or device, not being a rod and line, for catching salmon, without having a proper licence for the same, shall be liable to a penalty (*e*) of not less than double the amount to be paid for the requisite licence, and not exceeding twenty pounds (*b*).

Penalty on fishing at weirs or with nets without licence.
219, 222, 223

37. Any licensee under this Act on producing his licence, any conservator on producing a certificate of his being a conservator, or any water bailiff appointed in pursuance of this Act on producing the instrument appointing him, or any constable, if authorized so to do by the justices in quarter sessions, may require any person found fishing with a rod and line, fishing weir or fishing mill dam, net, or other instrument, to produce his licence; and the person required to produce the same shall, if he do not produce the same, or make a reasonable excuse for the non-production thereof, be liable to a penalty (*f*) not exceeding one pound.

Production of licence.
222, 223

38. A county of a city or county of a town shall for the purposes of this Act be deemed to be a county; and any act hereby authorized to be done by or to the justices of a county in quarter sessions assembled shall, in the case of a county of a city or county of a town, be done by or to the council of such city or town assembled at any meeting of council; and any act to be done by or to the clerk of the

County of city or county of town included under the term county.

not in conflict with *Lync v. Leonard* (*infra*), because the words of this section differ in a material respect from those of sect. 36, under which *Lync v. Leonard* was decided; for in the latter section instruments "for catching salmon" are prohibited, whilst in the former section only "fishing with a rod and line for salmon without a license" is forbidden; see judgment of Cave, J., in *Marshall v. Richardson*, (1898) 60 L. T. 605, at p. 606.

(*a*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*; third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*b*) See note (*y*), p. 274.

(*c*) Under this section a penalty can be imposed on any person who uses putts which may catch salmon in a salmon fishery without a license. The putts in the case of *Lync v. Leonard*, (1868) L. R. 3 Q. B. 156, had a temporary wire grating which prevented salmon from entering, and Blackburn, J., held that it does not cease to be a putt when there is only that which caused a temporary interruption to its use, which interruption might at any moment be removed. A casting net or night lines must be licensed: *Hill v. George*, (1880) 44 J. P. 424; *Short v. Bastard*, (1891) 46 J. P. 580; *Williams v. Long*, (1893) 57 J. P. 217.

(*d*) Licensees of nets may have the assistance of unlicensed persons to assist in the working of the nets: *Lewis v. Arthur*, (1871) 24 L. T. 66; now see Salmon Fishery Act, 1873, s. 21, sub-s. (4).

(*e*) Second offence penalty must be 2*l.* 10*s.* to 20*l.*; third offence, 5*l.* to 20*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18.

(*f*) Second offence, 10*s.* to 1*l.*; third offence, 1*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

peace may be done by or to the town clerk or other like officer ; and notice of a meeting of the council given in the usual way shall be equivalent to the notice of quarter sessions required to be given in the case of the justices of a county.

Fixed Engines.

Amendment
of provisions
relating to
fixed engines.

215, 218

39. "Fixed engine" (*g*) shall in this Act and the Salmon Fishery Act, 1861, include any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a fishing weir or fishing mill dam : and whereas by the eleventh section of the Salmon Fishery Act, 1861, it is provided that the said section shall not affect any ancient right or mode of fishing as exercised at the time of the passing of the Act by virtue of any grant or charter or immemorial usage : Be it enacted, that the said provisions shall extend to exempt from the said eleventh section such fixed engines only as were in use for catching salmon during the open season of one thousand eight hundred and sixty-one, in pursuance of an ancient right or mode of fishing as lawfully exercised during such open season, by virtue of any grant or charter or immemorial usage, which last-mentioned fixed engines are herein-after referred to as privileged fixed engines. But inasmuch as in certain cases fixed engines in use during the four years previous to 1861, or one of such years, may from temporary causes have been out of use during the year 1861, and it is expedient to provide for such cases, it is hereby declared that if it is proved to the satisfaction of the special commissioners appointed under this Act that any fixed engine not in use during the open season of 1861 was in use during one of the said four years, proof of its user during one of such four years may be substituted for proof of its user during the open season of 1861 ; so, nevertheless, that no person shall by proving the use of different fixed engines during the said years be allowed to be entitled to a number of privileged engines exceeding the greatest number of such engines in use by him during some one of the years 1857, 1858, 1859, 1860, 1861.

Commis-
sioners to in-
quire as to
fixed engines.

219

40. Subject to such appeal as is herein-after mentioned, the special commissioners appointed under this Act, herein-after referred to as the commissioners, may inquire into the legality of all fixed engines erected or used for catching salmon within the limits of the Salmon Fishery Acts, 1861 and 1865, and abate and remove all such as are not proved to their satisfaction to be privileged.

Certificate as
to privileged
engines.

219

41. Where a claim is made by any person on behalf of a fixed engine that it is privileged, the commissioners shall, on proof being given to their satisfaction that such engine is privileged, certify to

(*g*) For description of a fixed engine, see *Holford v. George*, (1868) L. R. 3 Q. B. 639 ; *Gore v. Special Commissioners for English Fisheries*, (1871) L. R. 6 Q. B. 561 : see Salmon Fishery Act, 1861, s. 4, *ante*, p. 249.

that effect, stating in the certificate the situation, size, and description of the engine. A certificate given in pursuance of this section shall be deemed to be an order of the commissioners, and to be subject to appeal as such. If unappealed from, or as confirmed or amended on appeal, such certificate shall be exclusive evidence that the engine is a privileged engine within the meaning of the Salmon Fishery Acts, 1861 and 1865, but the certificate shall not render any engine legal that would be otherwise illegal by reason of its being injurious to navigation.

42. Subject to such appeal as is herein-after mentioned, the commissioners may inquire into the legality of all fishing weirs and fishing mill dams throughout the limits of the Salmon Fishery Acts, 1861 and 1865, and shall remove such fishing weirs, and cause to be rendered incapable of catching fish such fishing mill dams as are in contravention of the Salmon Fishery Act, 1861; provided that where a fishing weir is illegal only by reason of its not having a free gap as required by law, or a fishing mill dam is illegal only by reason of its not having a fish pass attached thereto as required by law, this section shall not empower the commissioners to remove such fishing weir if an undertaking be entered into, to the satisfaction of the commissioners, by the owner or other persons interested in such weir, to make a legal free gap therein within a reasonable time to be prescribed by the commissioners, and a free gap is made accordingly, or to cause to be rendered incapable of catching fish such fishing mill dam if a like undertaking be entered into to attach a fish pass thereto, as required by law, within a reasonable time to be prescribed by the commissioners, and such fish pass be attached accordingly (*h*).

Commissioners to inquire as to fishing weirs.

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43. *Notices of Courts of Commissioners.*—[Repealed by Stat. Law Rev. Act, 1875.]

44. *Hearing as to Legality of fixed Engines.*—[Repealed by Stat. Law Rev. Act, 1875.]

45. *Appeal from Decision of Special Commissioners.*—[Repealed by Stat. Law Rev. Act, 1875.]

46. *Appointment of Commissioners under Sign Manual.*—[Repealed by Stat. Law Rev. Act, 1875.]

47. The commissioners appointed under this Act shall be styled "the special commissioners for English fisheries;" they shall cause to be made for their commission such seal or seals as they may require; and any summons, order, warrant, or other instrument, or copy thereof, purporting to be sealed with the seal of the commissioners, and to be signed as herein-after mentioned, shall be received in evidence without any further proof.

Commissioners to have a common seal.

(*h*) A dam built solely for milling purposes, and without any contrivances for catching fish, is not a fishing mill dam, and therefore not liable to be abated under this section; see *Garnett v. Backhouse*, (1867) L. R. 3 Q. B. 30.

48. *Commissioners not to sit in Parliament.*—[Repealed by Stat. Law Rev. Act, 1875.]

Acts of the
commissioners.

49. All warrants for the removal of any fishing weir or fixed engine, or for the alteration of any fishing mill dam, shall be signed by two at least of the commissioners, and all cases relating to the removal of such fishing weir or fixed engine, or alteration of any fishing mill dam, shall be heard by all the commissioners, but the opinions of two of them, of whom the said barrister shall be one, shall, in case of difference, decide any question; any other acts, except as aforesaid, authorized to be done by the commissioners may be done by any one of them, and any notice or other instrument under the seal of the commissioners, and signed by any person delegated by them, shall be deemed to be sufficiently executed.

50. *The Treasury to fix Salaries, &c., and appoint additional Officers.*—[Repealed by Stat. Law Rev. Act, 1875.]

51. *Duration of Office of Commissioners.*—[Repealed by Stat. Law Rev. Act, 1875.]

52. *Powers of Commissioners.*—[Repealed by Stat. Law Rev. Act, 1875.]

Copies of
orders of com-
missioners.

53. Copies of orders of the commissioners made in pursuance of this Act, with the accompanying plans and maps, if any, shall be deposited with the clerk of the peace of the county where any engine or any subject matter to which such order relates is situate; and any copy of such order, plan, or map purporting to be stamped with the seal of the commissioners shall be admissible in evidence, and any copy of any certificate or order of the said Secretary of State in pursuance of the Salmon Fisheries Acts, 1861—1865, or either of them, purporting to be stamped with the official stamp of the office of the said Board, and to be signed by any person by order of the said Board of Trade, shall also be admissible in evidence.

54. *Penalty for False Swearing.*—[Repealed by Stat. Law Rev. Act, 1875.]

55. *Proceedings not to Abate by Death, &c.*—[Repealed by Stat. Law Rev. Act, 1875.]

Miscellaneous.

Power in
certain cases
to award
imprisonment
with hard
labour instead
of penalty.

222

(i). Where any person has been convicted twice of any offence under any of the following sections of the Salmon Fishery Act, 1861—that is to say, sections eight, nine, fourteen, seventeen, and nineteen [repealed], he may, on being convicted a third time of any offence against any of the said sections, instead of being fined in a pecuniary penalty, be sentenced to imprisonment with or without hard labour for any period not exceeding six months or less than one month, and,

if a licensee, he shall on being convicted a second time of an offence against the Salmon Fisheries Acts, 1861, 1865, forfeit his licence.

57(j). The penalty in respect of any offence under the Salmon Fishery Acts, 1861 to 1873, *and under any bye-law made under the authority of this Act (k)*, shall on a conviction for a second offence be not less than one half the greatest penalty capable of being imposed in respect of such offence; and on a conviction for a third or any subsequent offence the greatest amount of penalty mentioned in the said Acts shall be imposed; but nothing herein contained shall affect the provisions of the Salmon Fishery Act, 1865, in respect of the discretion of imposing the punishment of hard labour as therein mentioned.

Minimum penalties.

58. Where any person has been convicted of an offence under section seventeen of the Salmon Fishery Act, 1861, he shall, in addition to the penalties thereby incurred, forfeit any net or moveable instrument used in committing such offence, and the convicting justices shall direct the same to be sold or destroyed, and the proceeds of such sale shall be paid to the conservators of the district.

Forfeiture of nets, &c.

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59. Whereas by the twenty-third section of the Salmon Fishery Act, 1861, any person sustaining loss by reason of a person or body of persons affixing a fish pass to a dam, in pursuance of that section, may recover compensation for such injury in a summary manner from the person or body of persons by whom such fish pass has been affixed: Be it enacted, that no such compensation shall be recovered unless proceedings for the recovery of the same are instituted within two years after the time at which the fish pass was first affixed to the dam.

Limit of time for compensation for fish pass.

60(l). Where any person, under the Salmon Fishery Act, 1861, is exempted from a penalty in respect of using or having in his possession salmon roe on the ground that he uses it or has it in his possession for artificial propagation or other scientific purposes, or is upon the same ground exempt from a penalty in respect of taking or having in his possession unclean or unseasonable salmon, *or young of salmon*, or catching or attempting to catch salmon when spawning or near their spawning beds, he shall not, if within a district where a board of conservators is established, be exempt in any of the above cases from such penalty unless the consent of the board has been given

Consent of conservators necessary for artificial propagation of salmon.

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(j) Printed as amended by Salmon Fishery Act, 1873, s. 18. Under this section the penalty need not exceed 2*l.* 10*s.* for a second offence, or 5*l.* for a third offence; see Salmon Fishery Act, 1873, s. 18, sub-s. 5.

(k) There is no power under this Act to make byelaws. Possibly this addition to this section refers to byelaws made for the better execution of this Act, by virtue of sect. 39 of the Salmon Fishery Act, 1873.

(l) Printed as amended by Salmon Fishery Act, 1873, s. 18.

in writing to such use or possession of salmon roe, or to such taking possession of unclean or unseasonable salmon or young of salmon.

As to disqualification of justices.

61. No justice of the peace shall be disqualified from hearing any case arising under the Salmon Fishery Acts, 1861, 1865, or either of them, by reason of his being a conservator or a member of a board of conservators, or a subscriber to any society for the protection of salmon or trout; provided that no justice shall be entitled to hear any case in respect of an offence committed on his own land (*m*).

Payment of penalties to conservators in certain cases.

62. Where any penalty is recovered on the complaint of a board of conservators or of any officer of or person authorized by a board of conservators, the Court shall, unless for special reason they think it inexpedient so to do, direct the whole of the penalty and the proceeds of any forfeiture to be paid to the said board, to be applied by them for the purposes of the Salmon Fishery Acts, 1861, 1865.

River Esk within limits of Act.

63. The river Esk, together with its banks and tributary streams up to their source, shall be deemed to be within the limits of the Salmon Fishery Acts, 1861 and 1865: Provided that all offences against the said Acts committed within Scotch jurisdiction shall be prosecuted and punished in manner directed by the "Salmon Fisheries (Scotland) Act, 1862."

Partial application of Salmon Acts to trout in salmon rivers.

213, 214, 221

64 (*n*). The sections of the Salmon Fishery Act, 1861, that apply to fishing with lights, spears, and other prohibited instruments, and to using roe as a bait, and which are numbered respectively eight and nine, as amended by this Act, shall apply to trout in a salmon river situate in a fishery district which is subject to a board of conservators appointed under this Act; and in any such river no person shall fish for, catch or attempt to catch, or kill any trout between the second day of *October* and the first day of February following, both inclusive; and any person wilfully killing any trout in any such river as aforesaid during such interval as aforesaid shall forfeit any trout caught by him, and shall, in addition thereto, be liable to a penalty not exceeding two pounds for each offence: Provided always, that nothing herein contained shall apply to any person

(*m*) A justice who is present at a meeting of a conservancy board when a resolution is passed to take proceedings for a violation of the Salmon Fisheries Acts is disqualified from adjudicating in proceedings so authorised: *Reg. v. Henley*, [1892] 1 Q. B. 504.

(*n*) Printed as amended by Salmon Fishery Act, 1873, s. 18. Throughout this section "trout" includes "char" (see *ibid.*), and applies to trout and char in all waters within the limits of the Freshwater Fisheries Act, 1878; and the term "salmon river" includes any such water; see Freshwater Fisheries Act, 1878, s. 5. In the application of this section to trout and char in waters under the Freshwater Fisheries Act, 1878, the words "salmon river" to "under this Act" mean "waters frequented by trout and char"; see Freshwater Fisheries Act, 1884, s. 4.

having in his possession trout or trout roe for the purpose of artificial propagation or other purpose, if such person has the permission in writing of the board of the district in which the river runs from whence such trout or trout roe has been taken to catch such trout, and to have in his possession such trout or trout roe for the purposes aforesaid.

65 (o). All salmon intended for exportation shall be entered for that purpose with the proper officer of Customs, at the port or place of intended exportation, before shipment thereof; and any salmon shipped or exported, or brought to any wharf, quay, or other place for exportation, between the third day of September and the *thirtieth day of April* following, contrary to this section, shall be forfeited, and the person shipping or exporting, or bringing the same for exportation, shall be liable to a penalty (*p*) not exceeding two pounds for every salmon so shipped or exported, or brought for exportation; and any officer of the Customs may, between the third day of September and the *thirtieth day of April*, open any parcel entered or intended for exportation, or brought to any quay, wharf, or other place for that purpose, and suspected by him to contain salmon, and may detain any salmon found in such parcel until proof is given, in manner provided by law, of the salmon being such as may be legally exported; and if the salmon, before such proof is given, become unfit for human food, the officers of Customs may destroy the same.

Provisions as to exportation of salmon.

225

66 (7). If any person feels aggrieved by any determination or adjudication of the justices with respect to any penalty or forfeiture under the Salmon Fishery Acts, 1861, 1865, or either of the said Acts, the person so aggrieved may appeal to the Court of general or quarter sessions.

Appeal to quarter sessions in case of summary conviction.

FIRST SCHEDULE.

Repealed by Salmon Fishery Act, 1873, 36 & 37 Vict. c. 71, s. 35.

SECOND SCHEDULE.

Repealed by Stat. Law Rev. Act, 1875.

(o) Printed as amended by the Salmon Act Amendment Act, 1870, s. 4.

(p) Second offence penalty must be 1*l.* to 2*l.* for each salmon; third offence, 2*l.* for each salmon: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(7) Printed as amended by the Summary Jurisdiction Act, 1884.

31 & 32 VICT. c. 45.

An Act to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the laws relating to British Sea Fisheries. [13th July, 1868.]

PART I.

Preliminary.

Division of
Act.

1. This Act shall be divided into parts as follows :

- Part I. Preliminary.
- Part II. Sea Fishery Convention.
- Part III. Oyster Fisheries.
- Part IV. Legal Proceedings.
- Part V. Miscellaneous.

Short title.

2. This Act may be cited as The Sea Fisheries Act, 1868.

Commence-
ment of Act.

3(r). This Act shall (except as is in this Act expressly otherwise provided) come into force on such day as may be fixed by a notice in that behalf published in the *London Gazette*, which day is in this Act referred to as the commencement of this Act.

Continuance
of Act as
herein stated.

4(s). So much of this Act as relates to French subjects or French sea-fishing boats outside of the exclusive fishery limits of the British Islands, and as gives powers to French sea-fishery officers, shall, on the determination of the Convention set out in the first schedule to this Act, cease to apply to French subjects, boats, and officers; but, subject as aforesaid, this Act shall continue in force, notwithstanding the determination of that Convention.

Interpretation
of terms :

"Sea-fish :"

5. In this Act—

The term "sea-fish" does not include salmon, as defined by any Act relating to salmon, but, save as aforesaid, includes every description both of fish and of shell fish which is found in the seas to which this Act applies; and "sea-fishing," "sea-fisherman," and other expressions referring to sea-fish shall in this Act be construed to refer only to sea-fish as before defined :

"Sea-fishing
boat :"

The term "sea-fishing boat" includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea-fishing, or in carrying on the business of a sea-fisherman :

(r) This Act was put in force on the 1st of February, 1869, but does not apply to French subjects and French vessels : see notices of the Board of Trade, *London Gazette*, 1869, pp. 356, 663.

(s) This section is repealed entirely as to the North Sea, and in other limits is repealed only as to officers and boats within the exclusive fishery limits of the British Islands, and to British sea-fishing boats when outside the exclusive fishery limits of the British Islands ; see Sea Fisheries Act, 1833, s. 30.

The term "British Islands" includes the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney and Sark, and their dependencies; and the terms "Great Britain and Ireland" and "United Kingdom," as used in the first schedule to this Act, shall be construed to mean the "British Islands" as herein defined:

The terms "exclusive fishery limits of the British Islands" and "exclusive fishery limits of France" mean the limits within which the exclusive right of fishing is by Article one of the first schedule to this Act reserved to British subjects and French subjects respectively:

The term "consular officer" includes consul general, consul, and vice-consul, and any person for the time being discharging the duties of consul general, consul, or vice-consul; and the term "consular agent" in the first schedule to this Act shall be construed to mean consular officer (*t*):

The term "Court" includes any tribunal or magistrate exercising jurisdiction under this Act:

The term "person" includes a body corporate.

The term "the Irish Fishery Commissioners" means the commissioners acting in execution of the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, intituled An Act to Regulate the Irish Fisheries, and the Acts amending the same.

PART II.

CONVENTION AND FISHERIES.

General Provisions.

[Sects. 6--16 are provisionally repealed by the Sea Fisheries Act, 1883, 2nd sched., Part II., but sect. 12 seems to be still in force; see Sea Fisheries Act, 1883, s. 30.]

12. If any person belonging to a sea-fishing boat which is either British or French acts in contravention of Article eleven of the first schedule to this Act, such person shall be deemed to have committed an offence against the Fishery Regulations of this Act (*u*). As to violation of Article 11 of Convention.
199, 201

Entry of Boats and Sale of Fish.

17. Article thirty-one of the Convention and the declaration annexed to the Convention shall not come into force until such day As to suspension of Article 31 of Convention.

(*t*) Repealed provisionally by Sea Fisheries Act, 1883, 2nd sched., Part II.

(*u*) See Sea Fisheries Act, 1883, s. 30, and presumably the Article XI. of 1st sched. of Sea Fisheries Act, 1865, is, therefore, in force as regards British vessels.

as may be fixed in that behalf by a notice published in the *London Gazette* (x).

Power of commissioners of Customs to make regulations respecting report and entry of sea-fishing boats.

18. The commissioners of Her Majesty's Customs may from time to time make, alter, and revoke regulations for carrying into effect Article thirty-one of the Convention, and respecting the report of British sea-fishing boats which have visited foreign ports, and of sea-fishing boats which are not British, and respecting the entry and landing of fish taken by sea-fishing boats which are not British, or respecting any of such matters, and may for such purpose alter and dispense with all or any of the regulations and enactments relating to the aforesaid matters which are contained in this or any other Act, or are otherwise from time to time in force.

The regulations so made shall be deemed to be regulations within the meaning of section two hundred of the Customs Consolidation Act, 1853 (y).

As to the sale of fish.

19. After the commencement of this Act all restrictions whatever in England, on the sale of sea-fish, as defined by this Act, which is not diseased, unsound, unwholesome, or unfit for the food of man shall be abolished.

Lights.

20 and 21. [Repealed provisionally by Sea Fisheries Act, 1883, 2nd sched., Part II.]

Registry of Sea-Fishing Boats.

22—24. [Repealed by the Merchant Shipping Act, 1894, s. 745.]

25. [Repealed by the Sea Fisheries Act, 1883, s. 30.]

Sea-fishing boats within exclusive limits to have official papers.

26. Subject to any exemptions allowed by or in pursuance of (z) such order in council, the master of every sea-fishing boat within the exclusive fishery limits of the British Islands, and of every British sea-fishing boat outside of those limits, shall have on board his boat, if it is a British sea-fishing boat required by this part of this Act to be entered or registered, the certificate of registry or official papers issued to the boat in pursuance of any Act relating to the registry of British ships, or of this part of this Act, and if it is not British, then official papers evidencing the nationality of such boat.

The master of any such boat who acts in contravention of this section, unless there is a reasonable cause for not having such

(x) No such notice appears to have been given.

(y) The portion of this section referring to sect. 200 of the Customs Consolidation Act, 1853, is to be construed as referring to sect. 170 of the Customs Consolidation Act, 1876; see the Sea Fisheries Act, 1883, s. 27.

(z) That is an order made under sect. 23; now they are made under the Merchant Shipping Act, 1894, s. 373. The order at present in force is St. R. & O., 1902, No. 274.

certificate or official papers (proof whereof shall lie on him), shall be liable, together with his boat and crew, to be taken by any sea-fishery officer without warrant, summons, or other process, into the nearest or most convenient port, and there to be ordered by the Court, on any proceeding in a summary manner, to pay a penalty not exceeding twenty pounds, and if such penalty is not paid, and the boat is not British, such boat may be detained in port for a period not exceeding three months from the date of the sentence.

PART III.

OYSTER FISHERIES.

[The powers conferred upon the Board of Trade to make orders with regard to oysters and mussels may be exercised with regard to cockles as if the expression "cockles" has been used in addition to the expressions "oysters" and "mussels"; see The Sea Fisheries Act, 1884, s. 1, *post*.]

Note.—As to this Part see 29 & 30 *Vict.* c. 85, and 30 & 31 *Vict.* c. 18 [now repealed].

Preliminary.

27. This part of this Act shall not interfere with the jurisdiction or powers now possessed by the Irish Fishery Commissioners with regard to oyster fisheries, and shall not apply to Ireland, the Isle of Man, or the Islands of Guernsey, Jersey, Alderney, or Sark, or their dependencies, or to the seas adjoining the same, within the exclusive fishery limits of the British Islands, or to any seas outside of those exclusive fishery limits.

Part III. not to apply to places herein stated.

28. In this part of this Act the words "oysters" and "mussels" respectively include the brood, ware, half-ware, spat, and spawn of oysters and mussels respectively.

Interpretation of certain terms.

In this part of the Act the expression "oyster and mussel fishery" includes a fishery for either oysters or mussels separately, and the term "oyster or mussel fishery" includes a fishery for both oysters and mussels; and the provisions of this part of this Act shall be construed to apply in the case of any fishery to oysters and oyster ground and beds alone, or to mussels and mussel ground and beds alone, or to both oysters and mussels and oyster and mussel ground and beds, according as the right of fishery is for oysters alone, or for mussels alone, or for both oysters and mussels.

Order for Fishery (a).

29. An order for the establishment or improvement, and for the maintenance and regulation, of an oyster and mussel fishery on the shore and bed of the sea, or of an estuary or tidal river, above or below, or partly above and partly below, low-water mark (which shore and bed are in this part of this Act referred to as the sea shore), and including, if desirable, provisions for the constitution of

Power to Board of Trade on memorial to make order for oyster fishery.

121. 199

(a) A list is to be found in the Appendix.

a board or body corporate for the purpose of such order, may be made under this part of this Act, on an application by a memorial in that behalf presented to the Board of Trade by any persons desirous of obtaining such an order (which persons are in this part of this Act referred to as the promoters).

Publication
of draft order
and notice to
owners of
adjoining
lands, &c.

199

30. If on consideration of the memorial the Board of Trade think fit to proceed in the case, the promoters shall cause printed copies of the draft of the order as proposed by them (with such modifications, if any, as the Board of Trade require) to be published and circulated in such manner as the Board of Trade think sufficient and proper for giving information to all parties interested, and shall give notice of the application, in such manner as the Board of Trade direct or approve, to the owners or reputed owners, lessees or reputed lessees, and occupiers (if any) of the portion of the sea shore to which the proposed order relates, and of the lands adjoining thereto.

Objections
and repre-
sentations re-
specting order.

199

31. During one month after the first publication of the draft order the Board of Trade shall receive any objections or representations made to them in writing respecting the proposed order.

Inquiry into
proposed
order by pub-
lic sittings.

199

32. The Board of Trade shall, as soon as conveniently may be after the expiration of the said month, appoint some fit person to act as inspector respecting the proposed order.

The inspector shall proceed to make an inquiry concerning the subject matter of the proposed order, and for that purpose to hold a sitting or sittings in some convenient place in the neighbourhood of the portion of the sea-shore to which the proposed order relates, and thereat to take and receive any evidence and information offered, and hear and inquire into any objections or representations made respecting the proposed order, with power from time to time to adjourn any sitting; and the inspector may, for the purpose of such inquiry, take evidence, and by summons under his hand require the attendance of any person, and examine him and any person who attends before him, on oath or otherwise, as he thinks expedient, and may administer an oath or take any affidavit or declaration for the purpose of the inquiry; and any person so summoned who, after tender to him of his reasonable expenses, refuses or neglects to obey such summons, and any person who refuses or neglects to answer any question which the inspector is authorized to ask, shall be liable, on summary conviction, to a penalty not exceeding ten pounds for each offence; and any person who wilfully gives false evidence in any examination on oath in any such inquiry, or in an affidavit or declaration to be used in any such inquiry, shall be deemed guilty of perjury.

Notice shall be published in such manner as the Board of Trade direct of every such sitting (except an adjourned sitting) fourteen days at least before the holding thereof.

33. The inspector shall make a report in writing to the Board of Trade setting forth the result of the inquiry, and stating whether in his opinion the proposed order should be approved, with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objections and representations, if any, made on the inquiry, and his opinion thereon.

Report of
inspector as to
proposed
order.

199

34. As soon as conveniently may be after the expiration of the said month, or after the receipt by the Board of Trade of the report of the inspector, they shall proceed to consider the objections or representations that have been made respecting the proposed order and also the report of the inspector, and thereupon they shall either refuse the application or settle and make an order in such form and containing such provisions as they think expedient.

Settlement
and making of
order.

199

35. Where the Board of Trade make an order, the promoters shall cause it to be published and circulated in such manner as the Board of Trade think sufficient for giving information to all parties interested, and shall give notice of it, in such manner as the Board of Trade direct or approve, to the owners or reputed owners, lessees or reputed lessees, and occupiers (if any) of the portion of the sea-shore to which the order relates, and of the lands adjoining thereto.

Publication of
order.

199

36. All expenses incurred by the Board of Trade in relation to any memorial, or to any order consequent thereon, shall be defrayed by the promoters, and the Board of Trade shall, if they think fit, on or at any time after the presentation of the memorial, require the promoters to pay to the Board of Trade such sum as the Board of Trade think requisite for or on account of those expenses, or to give security to the satisfaction of the Board of Trade for the payment of those expenses on demand.

Expenses connected with
order.

199

37. An order of the Board of Trade under this part of this Act shall not of itself have any operation, but the same shall have full operation when and as confirmed by Act of Parliament, with such modifications, if any, as to Parliament seem fit (*b*).

Confirmation
of order by
Act of
Parliament.

199

38. If in the progress through Parliament of a Bill confirming an order a petition is presented to either House of Parliament against the order, the Bill, as far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in case of a private Bill.

Power to refer
order to a
select committee
if opposed.

199

39. The Board of Trade may from time to time make an order for amending an order that has been confirmed by Act of Parliament, and all the provisions of this part of this Act relative to an original order shall apply also to an amending order, *mutatis mutandis*.

As to amend-
ment of order
by Board of
Trade.

199

(*b*) These local Acts are included in the List of Statutes at the commencement of this book.

Effect of grant
of several
oyster fishery.

200

40. Where an order of the Board of Trade under this part of this Act confers a right of several oyster and mussel fishery, the persons obtaining the order, in this Act referred to as the grantees, shall, by virtue of the order and of this part of this Act, but subject to any restrictions and exceptions contained in the order, have, within the limits of the fishery, the exclusive right of depositing, propagating, dredging, and fishing for, and taking oysters and mussels, and in the exercise of that right may, within the limits of the fishery, proceed as follows, namely, make and maintain oyster and mussel beds or either of them, and at any season collect oysters and mussels, and remove the same from place to place, and deposit the same as and where they think fit, and do all other things which they think proper for obtaining, storing, and disposing of the produce of their fishery.

Effect of grant
of power of
regulating
fishery.

200

41. When an order of the Board of Trade under this part of this Act, without conferring a right of several oyster and mussel fishery, confers a right of regulating an oyster and mussel fishery, and imposes restrictions on or makes regulations respecting the dredging and fishing for and taking oysters and mussels, or either of them, within the limits of the regulated fishery, or imposes tolls or royalties upon persons dredging, fishing for, and taking oysters and mussels, or either of them, within the limits of such fishery, the persons obtaining the order, in this Act included in the term the grantees, shall, by virtue of the order and of this part of this Act, but subject to any restrictions and exceptions contained in the order, have power to do all or any of the following things; namely,

- (a) To carry into effect and enforce such restrictions and regulations:
- (b) To levy such tolls or royalties:
- (c) To provide for depositing and propagating oysters and mussels within the limits of the fishery, and for improving and cultivating the fishery.

All such restrictions, regulations, tolls and royalties shall be imposed on and apply to all persons equally, and shall be for the benefit of the fishery only, and the tolls and royalties shall be applied in the improvement and cultivation of the fishery.

Any person who dredges or fishes for or takes any oysters or mussels in contravention of any such restriction or regulation, or without paying any such toll or royalty, shall be liable on summary conviction to pay a penalty not exceeding twenty pounds, and to forfeit all oysters and mussels so taken, or a sum equal to the value thereof if they have been sold, which forfeiture may be enforced in the same manner as a penalty.

The Court may direct such forfeiture to be delivered or paid to the grantees to be applied by them for the improvement and cultivation of the fishery.

42. Whenever it is necessary in any legal proceeding to prove that, in pursuance of any Act of Parliament or of an order under this part of this Act, the limits of any oyster and mussel fishery have been duly buoyed or otherwise marked, or notices of such limits have been duly published, posted, or distributed, or that notice of the provisions of the order or of such Act relating to the oyster and mussel fishery has been duly published, a certificate purporting to be under the hand of one of the Secretaries or Assistant Secretaries of the Board of Trade, certifying that the Board of Trade are satisfied that the said limits were so buoyed or marked, or that the said notices were duly published, posted, or distributed, shall be received as evidence that the same have been so buoyed or marked, or that the said notices have been so published, posted, or distributed.

Proof of marking of limits.

43. The portion of the sea shore to which an order of the Board of Trade under this part of this Act relates (as far as it is not by law within the body of any county) shall for all purposes of jurisdiction be deemed to be within the body of the adjoining county, or to be within the body of each of the adjoining counties, if more than one.

Fishery to be within county for purposes of jurisdiction.

44. The Board of Trade shall not in any case make an order conferring a right of several oyster and mussel fishery, or a right of regulating an oyster and mussel fishery for a longer period at once than sixty years.

Limitation on term of several fishery.

200

45. A right of several oyster or mussel fishery conferred by an order of the Board of Trade under this part of this Act, or by "The Roach River Oyster Fishery Act, 1866," and a right of regulating an oyster and mussel fishery, shall, notwithstanding anything in the order or in the said Act, be determinable by a certificate of the Board of Trade (which certificate they are hereby empowered to make) certifying to the effect that the Board of Trade are not satisfied that the grantees under the order, or the company under the said Act (as the case may be), are properly cultivating the oyster or mussel ground within the limits of such fishery, or are properly carrying into effect and enforcing the restrictions and regulations, and levying the tolls or royalties; and on any such certificate being made, the right of several fishery or right of regulating the fishery (as the case may be) by such order or the said Act conferred shall, by virtue of this part of this Act and of the certificate, be absolutely determined, and all provisions of this part of this Act or of the said Act shall cease to operate in relation to such fishery as a several oyster and mussel fishery or as a regulated fishery.

Condition for ceasing of several fishery, if no adequate benefit.

200

For the purposes of this provision the Board of Trade may from time to time, with respect to any such fishery, make such inquiries

and examination by an inspector or otherwise, and require from the grantees or company such information, as the Board of Trade think necessary or proper, and the grantees or company shall afford all facilities for such inquiries and examination, and give such information, accordingly (c).

Consent with respect to rights of the Crown or Duchies of Lancaster and Cornwall.

46 (d). Where any portion of the sea shore proposed to be comprised in an order of the Board of Trade under this part of this Act belongs to Her Majesty, in right of the Crown, but is not under the management of the Board of Trade, or forms part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, the Board of Trade shall not make the order without such consent as herein-after mentioned; namely,

In the first-mentioned case of the commissioners of Her Majesty's Woods, or one of them :

In the secondly-mentioned case of the Chancellor of the Duchy of Lancaster in writing under his hand attested by the clerk of the council of the Duchy :

In the thirdly-mentioned case of the Duke of Cornwall, or other the persons for the time being empowered to dispose for any purpose of lands of the Duchy of Cornwall.

Compensation to landowners, &c.

47. Where any portion of the sea shore comprised in an order of the Board of Trade under this part of this Act does not belong to Her Majesty, her heirs or successors, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, the Board of Trade shall incorporate in the order "The Lands Clauses Consolidation Act, 1845," or "The Lands Clauses Consolidation (Scotland) Act, 1845," as the case requires, and shall apply the provisions thereof respectively to the purchase or taking of such portion of the sea shore.

Order of Board of Trade not to abridge right of several fishery, &c.

199

48. No order made by the Board of Trade under this part of this Act shall take away or abridge any right of several fishery, or any right on, to, or over any portion of the sea shore, which right is enjoyed by any person under any local or special Act of Parliament, or any royal charter, letters patent, prescription, or immemorial usage, without the consent of such person.

Copies of orders and Acts printed by Queen's printer to be kept for sale.

49. The persons obtaining an order under this part of this Act shall at all times keep at some convenient place, in the neighbourhood of the portion of the sea shore to which the order relates, copies of the order with the Act confirming it, and of this part of this Act, printed respectively by some of Her Majesty's printers, and shall sell such copies to all persons desiring to buy them at a price not exceeding

(c) Any certificate made by the Board of Trade in pursuance of this section may be made either as to the entire area of the fishery or as to any part thereof; see the Oyster and Mussel Fisheries Orders Confirmation Act, 1869 (No. 2).

(d) Printed as amended by Stat. Law Rev. Act, 1898.

sixpence for one copy of this part of this Act and of the order and of the Act confirming it together.

If any such persons fail to comply with this provision, they shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding one pound for every day during which such failure continues after the day on which the first penalty is incurred.

50. There shall be annually laid before both Houses of Parliament a report of the Board of Trade respecting the applications to and proceedings of the Board of Trade under this part of this Act during each year.

Annual report
of Board of
Trade.

Protection of Oyster Beds (e).

51. All oysters and mussels being in or on an oyster or mussel bed within the limits of a several oyster and mussel fishery granted by an order under this part of this Act, and all oysters being in or on any private oyster bed which is owned by any person independently of this Act, and is sufficiently marked out or sufficiently known as such, shall be the absolute property of the grantees or of such owner, as the case may be, and in all courts of law and equity and elsewhere, and for all purposes, civil, criminal, or other, shall be deemed to be in the actual possession of the grantees and such owner respectively.

Property in
oysters, &c.
within several
fishery.

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52. All oysters and mussels removed by any person from an oyster or mussel bed within the limits of any such several fishery, and all oysters removed by any person from any such private oyster bed, and not either sold in market overt or disposed of by or under the authority of the grantees or owner (as the case may be), shall be the absolute property of the grantees and owner respectively, and in all Courts of law and equity and elsewhere, and for all purposes, civil, criminal, or other, the absolute right to the possession thereof shall be deemed to be in the grantees and owner respectively.

Property in
oysters, &c.
removed from
several fishery.

53. It shall not be lawful for any person other than the grantees, their agents, servants, and workmen, within the limits of any such several fishery, or in any part of the space within the same described in this behalf in the order, or other than the owner of any such private oyster bed, his agents, servants, and workmen, within the limits of such bed, knowingly to do any of the following things :

Protection of
several fishery

197, 201

To use any implement of fishing except a line and hook or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster or mussel bed, or oysters or mussels, or the oyster or mussel fishery :

To dredge for any ballast or other substance except under a lawful authority for improving the navigation :

To deposit any ballast, rubbish, or other substance :

(e) See also the Larceny Act, 1861, s. 26, *ante*, p. 246.

To place any implement, apparatus, or thing prejudicial or likely to be prejudicial to any oyster or mussel bed, or oysters or mussels, or to the oyster or mussel fishery, except for a lawful purpose of navigation or anchorage :

To disturb or injure in any manner, except as last aforesaid, any oyster or mussel bed, or oysters or mussels, or the oyster or mussel fishery :

And if any person does any act in contravention of this section he shall be liable to the following penalty, namely, to a penalty not exceeding two pounds for the first offence, and not exceeding five pounds for the second offence, and not exceeding ten pounds for the third and every subsequent offence ; and every such person shall also be liable to make full compensation to the grantees and owner respectively for all damage sustained by them or him by reason of his unlawful act, and in default of payment the same may be recovered from him by the grantees and owner respectively by proceedings in any Court of competent jurisdiction (but not in a summary manner), whether he has been prosecuted for or convicted of an offence against this section or not.

Limits of fishery to be kept marked out.

201

54. Provided always, That nothing in the last foregoing section shall make it unlawful for any person to do any of the things therein mentioned,—

(a.) In the case of a fishery granted by an order under this part of this Act, if at the time of his doing the same the limits of the several fishery or of the space within the same described in that behalf in the order are not sufficiently marked out in manner prescribed by or under the order, or if notice of those limits has not been given to him in manner so prescribed :

(b.) In the case of a private oyster bed owned by any person independently of this Act, if it is not sufficiently marked out and known as such.

Contiguous fisheries.

55. When two or more oyster or mussel beds or fisheries belonging to different proprietors are contiguous to each other, and any proceeding by indictment or otherwise is taken against any person for stealing oysters or mussels from any bed formed under an order made in pursuance of this part of this Act, or for stealing oysters from any bed formed independently of this Act, it shall be sufficient, in alleging and proving the property and lawful possession of the oysters or mussels stolen, and the place from which they were stolen, to allege and prove that they were the property of and in the lawful possession of one or other of such proprietors, and were stolen from one or other of such contiguous beds or fisheries.

Application of Act to Orders, &c. under

56. This part of this Act shall, as to all orders made under the Oyster and Mussel Fisheries Act, 1866, which have been or may be

confirmed in this session of Parliament, apply in the same manner as if they had been made and confirmed in pursuance of this part of this Act. 29 & 30 Vict.
c. 85.

All orders made under the Oyster and Mussel Fisheries Act, 1866, before the commencement of this Act, and not so confirmed, and all proceedings taken before the commencement of this Act with a view to obtain any such orders, shall have effect and be proceeded with as if they had been respectively made and taken under this part of this Act.

PART IV.

LEGAL PROCEEDINGS.

57. All penalties, offences, and proceedings under this Act, or under any order in council made thereunder, (except any felony, and except as otherwise provided,) may be recovered, prosecuted, and taken in a summary manner, and— Mode of
recovering
penalties.

In England, before any justice, and

In Scotland, before any Court or judge acting under the Summary Procedure Act, 1864, and any Act amending the same, in manner directed by those Acts, and

In the Isle of Man, and the islands of Guernsey, Jersey, Alderney, and Sark respectively, before any Court, governor, deputy governor, deemster, jurat, or other magistrate, in the manner in which the like penalties, offences, and proceedings are by law recovered, prosecuted, and taken, or as near thereto as circumstances admit.

58. If any person feels aggrieved by any conviction under this Act, or by any determination or adjudication of the Court with respect to any compensation under this Act, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, he may appeal therefrom in manner following; (that is to say,) Appeal.

In England: To some Court of general or quarter sessions.

In Ireland, in manner directed by the Petty Sessions, Ireland, Act, 1851, and any Act amending the same:

In Scotland, the Isle of Man, and the islands of Guernsey, Jersey, Alderney, and Sark, in manner in which appeals from the like convictions and determinations and adjudications are made (*f*).

59. *Proceedings where Offender belongs to a French Boat.*— [Repealed provisionally; see note to s. 3, *ante*, and Sea Fisheries Act, 1883, s. 30 (c).]

60. For the purpose of giving jurisdiction to Courts under this Act the following provisions shall have effect: Jurisdiction
of Courts.

(*f*) Printed as amended by the Sea Fisheries Act, 1883, s. 30, and the Summary Jurisdiction Act, 1884, s. 4.

- (1.) A sea-fishing boat shall be deemed to be a ship within the meaning of any Act relating to offences committed on board a ship :
- (2.) The same Court shall have power to exercise the jurisdiction conferred by this Act with respect to an offence committed by a foreign subject as would have jurisdiction to try such offence if it had been committed by a British subject.

61. *Evidence taken in France.*—[Repealed provisionally by the Sea Fisheries Act, 1883, s. 30.]

Service to be good if made personally or on board ship.

62. Service of any summons or other matter in any legal proceeding under this Act shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any sea-fishing boat to which he may belong, with the person being or appearing to be in command or charge of such boat.

63. *Masters of Boats liable to Penalties imposed.*—[Printed as provisionally repealed by Sea Fisheries Act, 1883, s. 30.]

Any penalty under this Act, except a penalty for the non-payment of which detention in a port is specially provided as the remedy, may be recovered in the ordinary way, or, if the Court think fit so to order, by distress or pouding and sale of the sea-fishing boat to which the offender belongs, and her tackle, apparel, and furniture, and any property on board thereof, or belonging thereto, or any part thereof.

Application of penalties.

64. The Court imposing any penalty or enforcing any forfeiture under this Act may, if it think fit, direct the whole or any part thereof to be applied in or towards payment of the expenses of the proceedings; and, subject to such direction, and to any direction given under any express provision in this Act, all penalties and forfeitures recovered under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the commissioners of the Treasury may direct, and shall be carried to the consolidated fund.

Saving of rights as herein stated.

65. Nothing in this Act shall prevent any person being liable under any other Act or otherwise to any indictment, proceeding, punishment, or penalty, other than is provided for any offence by this Act, so that no person be punished twice for the same offence.

Nothing in this Act, or in any order in council made thereunder, nor any proceedings under such Act or order with respect to any matter, shall alter the liability of any person in any action or suit with reference to the same matter, so that no person shall be required to pay compensation twice in respect of the same injury.

PART V.

MISCELLANEOUS.

66. Whereas by a convention concluded between the United Kingdom and France on the twenty-sixth day of January one thousand eight hundred and twenty-six it was, amongst other matters, agreed that sea-fishing boats of either country, when forced by stress of weather to seek shelter in the ports or on the coasts of the other country, should on certain conditions be exempted from all dues to which they would otherwise be liable, and doubts have arisen whether that part of the said convention has ever been confirmed by the authority of Parliament, and it is expedient to remove such doubts, and to enable Her Majesty to provide for the due execution of the said convention and of any other like convention or treaty which may be made by Her Majesty: Be it enacted, that where any such convention or treaty as mentioned in this section has been or may hereafter be concluded with any foreign country, Her Majesty may by order in council direct that every sea-fishing boat belonging to such foreign country, when forced by stress of weather to seek shelter in any port or place in the British Islands, shall, if it does not discharge or receive on board any cargo, and complies with the other conditions, if any, specified in such order, be exempt from all dues, tolls, rates, taxes, duties, imposts, and other charges to which it would otherwise be liable in such port or place, and every such boat shall be exempt accordingly (*g*).

Confirmation of treaties for exempting from dues foreign sea-fishing boats entering British ports from stress of weather.

67. The Irish fishery commissioners may from time to time lay before Her Majesty in council byelaws for the purpose of restricting or regulating the dredging for oysters on any oyster beds or banks situate within the distance of twenty miles measured from a straight line drawn from the eastern point of Lambay Island to Carnsore Point on the coast of Ireland, outside of the exclusive fishery limits of the British Islands, and all such byelaws shall apply equally to all boats and persons on whom they may be binding.

Regulations for oyster fisheries off the Irish coast.

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It shall be lawful for Her Majesty, by order in council, to do all or any of the following things; namely,

- (a) To direct that such byelaws shall be observed:
- (b) To impose penalties not exceeding twenty pounds for the breach of such byelaws:
- (c) To apply to the breach of such byelaws such (if any) of the enactments in force respecting the breach of the regulations respecting Irish oyster fisheries within the exclusive fishery

(*g*) By order in council October 7th, 1869 (Stat. Rules and Ord. Rev., Vol. III., p. 239), every French sea-fishing boat, when forced by stress of weather to seek shelter in any port or place in the British Isles, shall, if it does not discharge or receive on board any cargo, be exempt from all dues, tolls, taxes, duties, imposts, and other charges to which it would otherwise be liable in such port or place.

limits of the British Islands, and with such modifications and alterations, as may be found desirable :

(d) To revoke or alter any order so made.

Provided that the length of close time prescribed by any such order shall not be shorter than that prescribed for the time being by the Irish Fishery Commissioners in respect of beds or banks within the exclusive fishery limits of the British Islands.

Every such order shall be binding on all British sea-fishing boats, and on any other sea-fishing boats in that behalf specified in the order, and on the crews of such boats.

Regulations
as to seine-
fishing in
Cornwall.

193, 194,
197, 198

68. On the coast of Cornwall, except so much of the north coast as lies to the east of Trevoze Head, no person between the twenty-fifth of July and twenty-fifth of November in any year—

- (a) shall, from sunrise to sunset, within the distance of two miles from the coast, measured from low-water mark (whether in bays or not), use a drift net or trawl net, or
- (b) shall, within half a mile of any sea-fishing boat stationed for seine-fishing, anchor any sea-fishing or other boat (not being a boat engaged in seine-fishing), or lay, set, or use any net, boulder, or implement of sea-fishing (except for the purpose of seine-fishing) :

Any person who acts in contravention of this section shall be liable on summary conviction to a penalty not exceeding twenty pounds, which may be recovered in the same manner as a penalty for an offence against the fishery regulations of this Act.

As to publica-
tion and
evidence of
orders in
council.

69. With respect to any orders in council made in pursuance of this Act, the following provisions shall have effect :

- (1.) They shall be published in the *London Gazette*, or otherwise published in such manner as the Board of Trade may direct for such sufficient time before they come into force as to prevent inconvenience :
- (2.) They may be proved in any legal proceeding by the production of a copy of the Gazette containing the said advertisement, or of a copy of the orders or regulations purporting to be printed by the printer to Her Majesty.

Application of
Act.

70. The enactments in this Act which are restricted in terms to the seas outside the exclusive fishery limits of the British Islands or to any particular part of the British Islands and the seas adjoining the same shall apply only to those seas and such part, but, save as aforesaid, this Act shall apply to the seas adjoining the coasts of France specified in article three of the first schedule to this Act outside of the exclusive fishery limits of France, and to the whole of the British Islands as defined by this Act, and to the seas surrounding the same, whether within or without the exclusive fishery limits of

the British Islands, and the royal Courts of Guernsey and Jersey shall register this Act in their respective Courts.

Provided that nothing in this Act relating to oyster or mussel fisheries, or to oysters or mussels, shall in any way whatever alter, interfere with, or affect the jurisdiction which the Irish Fishery Commissioners would have power to exercise over the seas surrounding Ireland and over the oyster fisheries and oyster beds in those seas if this Act had not passed.

71. *Repeal of Acts as in Second Schedule.*—[Repealed by the Sea Fisheries Act, 1883, 2nd schedule, Part I.]

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

FIRST SCHEDULE.

[This schedule is provisionally repealed except the Articles here set out by the Sea Fisheries Act, 1883, s. 30.]

Convention between Her Majesty and the Emperor of the French, relative to fisheries in the seas between Great Britain and France.

ARTICLE IV.—All British and French fishing boats shall be lettered and numbered.

In the United Kingdom there shall be a series of numbers for the fishing boats belonging to each collectorship of Customs (*a*), and in France a series of numbers for the fishing boats belonging to each district of maritime registry; and to these numbers shall be prefixed a letter (or letters) to be designated by the Board of Customs in the United Kingdom, and by the Ministry of Marine in France.

ARTICLE V.—The letter (or letters) and number shall be placed on each bow of the boat, 3 or 4 inches (8 or 10 centimètres French) below the gunwale, and they shall be painted in white oil colour on a black ground.

For boats of 15 tons burthen and upwards the dimensions of the letters and numbers shall be 18 inches (45 centimètres French) in height, and 2½ inches (6 centimètres French) in breadth.

For boats of less than 15 tons burthen, the dimensions shall be 10 inches (25 centimètres French) in height, and 1¾ inches (4 centimètres French) in breadth.

The same letter (or letters) and number shall also be painted on each side of the mainsail of the boat, in black oil colour on white sails, and in white oil colour on tanned or black sails. Such letter (or letters) and number on the sails shall be one-third larger in every way than those placed on the bows of the boat.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 3 inches (8 centimètres French) in height and ½ inch (12 millimètres French) in breadth.

(*a*) See order in council dated 26th March, 1902, *post*, p. 39.

The letters, numbers, and names placed on the boats and on their sails shall not be effaced, covered, or concealed in any manner whatsoever.

ARTICLE VI.—All the buoys, barrels, and principal floats of each net, and all other implements of fishery, shall be marked with the same letter (or letters) and number as those of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they judge proper.

ARTICLE VII.—The letters and numbers of British fishing boats shall, after having been entered in the registry book kept at the collectorship of Customs, be inserted on the licences or other official papers of those boats.

The letters and numbers of French fishing boats shall, after having been entered in the registry book kept at the Maritime Registry Office, be inserted on the muster rolls of those boats.

ARTICLE VIII.—The licences or other official papers of British fishing boats, and the muster rolls of French fishing boats, shall contain the description and tonnage of each boat, as well as the names of its owner and of its master.

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ARTICLE XI.—From the 16th of June to the 31st of August inclusive, fishing for oysters is prohibited outside the fishery limits which have been fixed for the two countries, between a line drawn from the North Foreland Light to Dunkirk, and a line drawn from the Land's End to Ushant.

During the same period and in the same part of the Channel, no boat shall have on board any oyster dredge, unless the same be tied up and sealed by the Customs authorities of one of the two countries in such a manner as to prevent its being made use of.

ARTICLE XXXI.—Fishing boats of either of the two countries shall be admitted to sell their fish in such ports of the other country as may be designated for that purpose, on condition that they conform to the regulations mutually agreed upon. Those regulations, together with a list of the ports, are annexed to the present convention; but without prejudice to the opening by either country of any additional ports (*h*).

Declaration annexed to the Convention of November 11, 1867.

The fishermen of each country shall not be allowed to land or discharge their fish in the other country except at places where there is a Custom House, and during office hours.

Immediately upon their arrival, and in all cases before they commence the discharge of their cargo, they shall present their muster roll, or licence, or official paper, to the proper officer of Customs, and shall pass an entry at the Custom House stating as nearly as possible the quantity of fish which they have on board.

If the master of a fishing boat cannot write, the officer of Customs shall fill up for him the form required, and the master shall affix his mark thereto.

The Custom House officers shall have power to board and search the fishing boats of the other country in the manner directed by the Customs laws.

During their stay in the ports of the other country, the fishermen of either country shall, if required to do so by the Customs authorities, deposit in a warehouse or in the Custom House, until their departure, all stores subject to duty, which shall not be necessary for their daily consumption. No charge shall be made for such warehousing.

The ports enumerated in the subjoined list, where there is a Custom House establishment, are those that shall be open in each country to the fishermen of the other country. In case the Customs establishment at any of those ports should be abolished, notice thereof shall be given to the Government of the other country.

LIST OF THE PORTS IN THE UNITED KINGDOM OPEN FOR THE
IMPORTATION OF FISH BY FRENCH FISHING BOATS.

In England.

| | | |
|----------------|-----------------|-----------------|
| Bristol. | Liverpool. | Ramsgate. |
| Cardiff. | London. | Shields. |
| Dover, C. | Lowestoft. | Shoreham, C. |
| Folkestone, C. | Middlesborough. | Southampton, C. |
| Falmouth, C. | Newcastle. | Sunderland. |
| Grimsby. | Newhaven, C. | Swansea. |
| Hartlepool. | Newport. | Weymouth, C. |
| Harwich. | Portsmouth, C. | Whitby. |
| Hull. | Plymouth. | Yarmouth. |

In Scotland.

| | | |
|-----------|-----------|-------|
| Aberdeen. | Greenock. | Wick. |
| Glasgow. | Leith. | |

In Ireland.

| | | |
|----------|---------|------------|
| Belfast. | Dublin. | Waterford. |
| Cork. | Galway. | |

In the Channel Islands.

| | |
|------------|--------------|
| Jersey, C. | Guernsey, C. |
|------------|--------------|

The ports in the Channel are marked with a C.

LIST OF THE PORTS OF THE FRENCH EMPIRE OPEN FOR THE
IMPORTATION OF FISH BY BRITISH FISHING BOATS.

| Directions. | — | Directions. | — |
|-------------|--|---------------------------------|--|
| DUNKERQUE . | Gravelines. Dunkerque. | Boulogne . <i>continued.</i> | Berck (plage mari- time). Etaples. Boulogne. Calais. |
| BOULOGNE . | Houedel. St. Valéry-sur- Somme. Crotoy. Abbeville. | LE HAVRE . | Harfleur. Le Havre. |

LIST OF THE PORTS OF THE FRENCH EMPIRE, &c.—*continued.*

| Directions. | — | Directions. | — |
|--------------------------------|---|--------------------------------|---|
| Le Havre— <i>continued.</i> | Fécamp. St. Valéry-en-Caux. Dieppe. Tréport. Eu. | Brest— <i>con- tinued.</i> | Morgat. Camaret. Port Launay. Le Faon. Landerneau. Brest. Le Conquet. Labrevrach. Roscoff. Morlaix. |
| ROUEN . . | Rouen. Croisset. Duclair. Caudebec. | | |
| CAEN . . | Isigny. Port-en-Bessin. Courceulles. Caen. Ouistreham Trouville. Honfleur. Pont-Audemer. | VANNES . | Redon. La Roche-Bernard. Tréhiguier. Billiers. Pénerf. Ambon. Vannes. Belle-Croix. Sarzeau. Suscinio. Saint Armel. Novalo. Quatre-vents. Ile d'Ars (Ile du Morbihan). Port Novalo. Larmorbadon. Locmariaquer. Auray. Rochdu. La Trinité. Carnac. Porthaliguen. Palais (Ile). Etel. Port Louis. Hennebon. Lorient. Kernevel. Groix (Ile). |
| SAINT LÔ . | Granville. Regneville. Portbail (Havre). Dilette. Carentan. Cherbourg. Barfleur. Saint Vaast. Omonville. | | |
| SAINT BRIEUC | Lannion. Perros. Tréguier. Lézardrieux. Pontrieux. Paimpol. Portrieux. Binic. Le Légué. Dahonet. Erquy. Le Guildo. Plouer. Dinan. Saint Suliac. Saint Servan. Saint Malo. La Houlle. Le Vivier. | NANTES . | Noirmoutiers. St. Gilles. Ile d'Yeu. La Barre-de-Mont (pour sur canal). Beauvoir (idem). Boin (idem). Bourgneuf. Pornic. Paimbœuf. Saint Nazaire. Nantes. Chantenay. La Basse-Indre. Port Nichet. Poulignen. |
| BREST . . | Quimperlé. Douélan. Pontaven. Concarneau. Quimper. Pont l'Abbé. Audierne. Douarnenez. | | |

LIST OF THE PORTS OF THE FRENCH EMPIRE, &c.—*continued*.

| Directions. | — | Directions. | — |
|----------------------------|---|---------------------------------|---|
| Nantes— <i>continued</i> . | Le Croisic. La Turballe. Le Rosais. | La Rochelle— <i>continued</i> . | La Flotte (Ile de Ré). St. Martin (idem). Loix (idem). Ars (idem). Luçon (port sur canal). L'Aiguillon. Les Sables. Saint-Martin de Brem. |
| LA ROCHELLE. | La Tremblade. Mornac. L'Eguille. Le Gua. Niculle (port sur canal). Lusac (port sur canal). Marennes (idem). Le Chapus. Le Château (Ile d'Oléron). St. Pierre (idem). St. Georges (idem). St. Denis (idem). Bronage (port sur canal). Moëze. Charente. Rochefort. Fouran. Ile d'Aix (Ile). La Rochelle. Lauzières. Marans. | BORDEAUX . | La Teste. Gujan. Certes. Le Verdon. La Fosse (port sur canal). Pauillac. Bordeaux. Libourne. Plaigne. Bourg. Blaye. Montagne. Les Meschers. Royan. |
| | | BAYONNE . | Saint Jean de Luz. Bayonne. |

In witness whereof the respective plenipotentiaries have signed these annexes to the convention concluded this day, and have affixed thereto the seals of their arms.

At Paris, the 11th November, 1867.

(L.S.) LYONS.

(L.S.) MOUSTIER.

SECOND SCHEDULE.

Repeal of previous statutes; now repealed by the Sea Fisheries Act, 1883, s. 30.

32 & 33 VICT. c. 31.

An Act to confirm an Order made by the Board of Trade under the Sea Fisheries Act, 1868, relating to Langston, and to amend the forty-fifth section of the Sea Fisheries Act, 1868.

[12th July, 1869.]

1. [Confirmation of Order in Schedule—Local and personal.]

2. Any certificate hereafter to be made by the Board of Trade in pursuance of the forty-fifth section of "The Sea Fisheries Act, 1868," may be made either as to the entire area of the fishery or as to any part thereof.

Certificate to be made by the Board of Trade.

Short title.

3. This Act may be cited as “The Oyster and Mussel Fisheries Orders Confirmation Act, 1869 (No. 2).”

SCHEDULE.

[Local and personal.]

33 & 34 VICT. c. 33.

An Act to amend the Acts relating to the Export of Unseasonable Salmon. [1st August, 1870.]

Preamble.—[Repealed by Stat. Law Rev. Act (No. 2), 1893.]

Short title.

1. This Act may be cited for all purposes as “The Salmon Acts Amendment Act, 1870.”

2. [Repealed by Stat. Law Rev. Act (No. 2), 1893. Act enforced 3rd September, 1870.]

Amendment
of sect. 3 of
26 Vict. c. 10.

3 (i). The said third section of “The Salmon Acts Amendment Act, 1863,” shall be read and construed as if the words “second day of February” were omitted therefrom and the words “thirtieth day of April” were inserted instead of the said omitted words.

Amendment
of sect. 65 of
28 & 29 Vict
c. 121.

4. The sixty-fifth section of “The Salmon Fishery Act, 1865,” shall be read and construed as if the words “second day of February” were omitted therefrom and the words “thirtieth day of April” were inserted instead of the said omitted words.

36 & 37 VICT. c. 71.

An Act to amend the Law relating to Salmon Fisheries in England and Wales. [5th August, 1873.]

[NOTE.—Throughout this Act the Board of Trade has been substituted for the Home Office and Secretary of State in accordance with the provisions of the Salmon and Freshwater Fisheries Act, 1886.]

Preamble.—[Repealed by Stat. Law Rev. Act (No. 2), 1893.]

PART I.

PRELIMINARY. DEFINITIONS.

Short title of
Act.

1. This Act may be cited for all purposes as “The Salmon Fishery Act, 1873,” and this Act and “The Salmon Fishery Acts, 1861 and 1865,” may be cited together as “The Salmon Fishery Acts, 1861 to 1873.”

Construction
of Act.

2. This Act, so far as is consistent with the tenor thereof, shall be read as one with “The Salmon Fishery Acts, 1861 and 1865.”

3. This Act shall not come into operation until the first day of September one thousand eight hundred and seventy-three, which date is hereinafter referred to as the commencement of this Act. [Repealed by Stat. Law Rev. Act (No. 2), 1893.]

4. In the construction of this Act and of "The Salmon Fishery Acts, 1861 and 1865," unless there is something in the subject or context repugnant to such construction, the words and expressions herein-after mentioned shall have respectively the meanings herein-after assigned to them; (that is to say,)

"Annual close season" and "weekly close season" shall mean the annual close season and the weekly close season for all kinds of salmon fishing except by rod and line respectively applicable to and in force in the fishery district or place in which any offence charged shall be committed, and all penalties, forfeitures, proceedings, powers, and things described in the seventeenth, twentieth, twenty-first, and twenty-second sections of "The Salmon Fishery Act, 1861," as applicable to the periods therein specified, or intended to be specified, as the annual or weekly close seasons, shall be deemed to apply to the annual or weekly close seasons, as these may have been or shall be lawfully varied from time to time in each fishery district respectively :

"Close season for rods" shall mean and include the annual season during which at any particular place it is or shall be unlawful at that place, under the provisions of "The Salmon Fishery Acts, 1861 to 1873," to fish for, kill, take, or destroy, or attempt to kill, take, or destroy, any salmon with a single rod and line :

... The words "fishing weir" shall mean any erection, structure, or obstruction fixed to the soil either temporarily or permanently across, or partly across, a river or branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish (a) :

"Fixed engine" shall include, in addition to the nets, fixed implements, engines, and devices respectively mentioned in "The Salmon Fishery Acts, 1861 and 1865," any net placed or suspended in any inland or tidal waters unattended by the owner or any person duly authorised by the owner to use the same for catching salmon, and all engines, devices, machines, or contrivances, whether floating or otherwise, for placing or suspending such nets or maintaining them in working order or making them stationary :

"Grating" shall mean and include any device approved by the Board of Trade for preventing the passage of fish through any channel :

"Inspectors" shall mean the inspectors of salmon fisheries appointed under the provisions of the thirty-first section of the Salmon Fishery Act, 1861 :

Commence-
ment of Act.

Definition of
terms.

"Annual
close season"
and "weekly
close season :"

"Close season
for rods :"

"Fishing
weir :"

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"Fixed
engine :"

215

"Grating :"
215

"Inspector :"

| | |
|--------------------------------|--|
| "Occupier :" | "Occupier" shall include any person for the time being in actual possession of the fisheries and premises in respect of which that word is used, whether such person is owner or not : |
| "Otter lath or jack :" 212 | "Otter lath or jack" shall mean and include any small boat or vessel, board, or stick, used for the purpose of running out baits, artificial or otherwise, across any portion of any lake or river, and whether used with a hand line or as auxiliary to a rod and line, or in any other way : |
| "Owner :" | "Owner" shall mean and include any person receiving the rents of the property in respect of which that word is used from the occupier, or who would receive the same if such property were let to a tenant : |
| "Returning officer :" | "Returning officer" shall mean the chairman of any board of conservators, or any person appointed by writing under his hand to conduct the elections of boards of conservators in the manner herein-after prescribed : |
| "Rod and line :" 214 | "Rod and line" shall mean single rod and line : |
| "Secretary of State :" | "Secretary of State" shall mean one of Her Majesty's principal Secretaries of State : [now the Board of Trade ; see 49 and 50 Vict. c. 39 and Stat. Law Rev. Act (No. 2), 1893]. |
| "Strokehall or snatch." 212 | "Strokehall or snatch" shall mean and include any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul hooking any fish. |

PART II.

FISHERY DISTRICTS.

Power of
Board of
Trade to alter
districts.
207

5. A board of conservators of any fishing district may, after giving three calendar months notice in writing to any other board or boards of conservators affected by such alteration, or, in case there is no board, to the justices of the peace of any county in quarter sessions assembled, the whole or any part of which shall be affected by such alteration, apply to the Board of Trade to enlarge, reduce, or alter the limits of such district, or to combine two or more districts or parts of districts ; and, after such notice has been previously advertised for two successive weeks in one or more local newspapers published or circulating within the district or districts affected by such alteration, the Board of Trade may thereupon by their certificate enlarge, reduce, or alter such district, either by uniting it with any other district or districts, or combining it with any other part or parts of a district or districts, or by severing any part from such district and forming it into a separate district, or uniting it with any other district, or by adding to such district any place not yet included in any district ; and the certificate of the Board of Trade embodying all such alterations shall be granted in accordance with the provisions of "The Salmon Fishery Act, 1865," and shall transfer and apportion any existing contracts, debts, mortgages, liabilities, and assets among

such altered boards. But no alteration of any district shall affect the power of any existing board or boards until the new districts are fully constituted.

6. When the effect of any such alteration is to include in a district either an additional portion of any county previously included or a portion of a county not previously included, the justices of such county in quarter sessions assembled shall add such number of members to the existing board of the district as the Board of Trade shall appoint; and where the effect of such alteration is to exclude altogether from the district any county, the whole of the members of the board appointed by such county shall cease to hold their offices at such board. When the effect of such alteration is to partially exclude from the district any county, the number of members representing that county shall be reduced to such number as the Board of Trade shall appoint, and in case the effect of such alteration is to create the part severed from any district into a new district, or to unite the parts severed from different districts into a new district, then and in either of such cases the provisions of "The Salmon Fishery Act, 1865," shall apply as if a new district had been created under the provisions of the fifth section of that Act.

Combined districts.

7. A notice of any alteration made in any district or in the constitution of any board of conservators in pursuance of the provisions herein-before contained shall be advertised once in some daily morning London newspaper and at least once a week for four consecutive weeks in some newspaper or newspapers published or circulated within the district or districts affected by such alteration. The production of a copy of a newspaper containing any such advertisement shall be evidence of such advertisement having been given at the time such newspaper bears date.

Notices to be published.

8. A copy of the certificate or certificates of the Board of Trade deposited with the clerk of the peace of any county in relation to the formation, enlargement, combination, reduction, or alteration of a fishery district granted in pursuance of the fifth section of "The Salmon Fishery Act, 1865," or of this Act, certified or purporting to be certified as a true copy by the clerk of the peace of such county, shall be evidence that all the requisitions contained in "The Salmon Fishery Act, 1865," or in this Act, relating to the formation, enlargement, combination, reduction, or alteration of any fishery district have been complied with, and that such district has been duly formed, enlarged, combined, reduced, or altered with the limits and in the manner specified in such certificate or certificates.

Copy of certificate of formation of districts to be evidence.

9. It shall be lawful for the Board of Trade, on the application of the justices for any county comprised, or partly comprised, in any fishery district, in quarter sessions assembled, one month's previous notice of such application having been given to the board of conservators affected by such alteration, to alter the number of conservators

Power to Board of Trade to alter the number of conservators appointed by quarter sessions.

to be appointed at quarter sessions by the justices for all or any counties or county comprised, or partly comprised, in such district :

Provided always, that no such alteration shall be made, unless one month's previous notice has been given of the intention of the Board of Trade to make such alteration, in some newspaper or newspapers circulating within the district ; and previous to the expiration of such notice it shall be lawful for any person to represent to the Board of Trade any objection which he may have to such alteration, and the Board of Trade shall, after making such inquiry into such objection as they may think fit, either make such alteration, or not, as they may see fit, and shall cause their final determination to be published in the same newspaper or newspapers in which their intention to make such alteration was originally published.

Clerk of the peace to send notice of appointment.

10. In any fishery district, where any members of a board of conservators are appointed by the justices in quarter sessions of a single county, or of one or more counties, a notice of the appointment of the members of such board appointed by such county, or by each of such counties, with the name and address of each member, shall be sent to the clerk or other officer of the board of conservators by the clerk of the peace of such county, or of each of such counties, within fourteen days from the date of such appointment ; and any clerk of the peace refusing or neglecting to send such notice shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds.

Minute of conviction to be sent to board of conservators.

11. Where any person is convicted of an offence under the Salmon Fishery Acts, 1861 to 1873, or under any byelaw made in pursuance of this Act (a), the clerk of the justices before whom such person is convicted shall forward a certificate of such conviction to the clerk of the board of conservators for the fishery district within which such conviction took place within one calendar month from the date of such conviction, and such certificate shall be receivable in evidence in all legal proceedings, and any clerk to any justices neglecting or refusing to forward such certificate to the clerk of the board of conservators, shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds.

Appointment of conservators for the river Esk.

12. For the purposes of the Salmon Fishery Acts, 1861 to 1873, the Commissioners of Supply in Scotland shall have all the privileges and duties of the justices in quarter sessions in England for the election of boards of conservators for the river Esk.

PART III.

RESTRICTIONS AS TO CERTAIN MODES AND TIMES OF TAKING AND SELLING FISH.

Extension of the "Malicious Injuries Act," 192, 211

13. The provisions of the thirty-second section of the "Malicious Injuries to Property Act," so far as they relate to poisoning any

(a) Compare sect. 57 of the Salmon Fishery Act, 1865, *ante*, p. 279.

water with intent to kill or destroy fish, shall be extended and apply to salmon rivers, as if the words "or in any salmon river" were inserted in the said section in lieu of the words "private rights of fishery" after the words "noxious material in any such pond or water."

14. Any person who shall shoot or work any seine or draft net for salmon in a river across the whole width or more than three-fourths of the width thereof, within one hundred yards from the nearest point of the line of shot of any other seine or draft net worked in like manner, and already shot or being worked in such river, before such last-mentioned net is fully drawn in and landed, shall for every such offence be liable to a penalty (*j*) not exceeding five pounds.

No draft net to be shot within 100 yards of another until the latter is landed.

213

15. No person, between the first day of January and the twenty-fourth day of June inclusive, shall hang, fix, or use in any salmon river any baskets, nets, traps (*k*), or devices for catching eels or the fry of eels, or place in any inland water any device whatsoever to catch or obstruct any fish descending the stream; or shall at any time place upon the apron of any weir any basket, trap, or device for taking fish, except wheels or leaps for taking lampurns between the first day of August and the first day of March; and any person acting in contravention of this section shall incur a penalty (*l*) not exceeding two pounds for every day during which he suffers such engines to be fixed or used as aforesaid. But nothing herein contained shall extend to prohibit the use of eel baskets not exceeding in any part ten inches in diameter constructed so as to be fished with bait, and not used at any dam or weir (*m*).

No eel baskets, &c. to be fixed between 1st January and 24th day of June.

204, 220, 221

16. No person shall, during the annual or weekly close season, in any year, place any obstruction, use any contrivance, or do any act, for the purpose of deterring salmon from passing up a river; and any person acting in contravention of this section shall be liable to a penalty (*n*) of not exceeding five pounds: Provided always, that nothing in this section shall apply to any kind of fishing for fish other than salmon legally practised in any river.

Interference with salmon in close seasons.

215, 220

17. No person shall catch or kill, or attempt to catch or kill, except with rod and line, or scare or disturb, or attempt to scare or

No fishing within 50 yards above

213, 215, 218

(*j*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*k*) A permanent structure for the purpose of catching eels erected at a weir before the passing of this Act, if used during the close time, renders the person so doing guilty of an offence under this section: *Briggs v. Swanwick*, (1883) 10 Q. B. D. 510.

(*l*) Second offence penalty must be 1*l.* to 2*l.* per diem; third offence, 2*l.* per diem: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*m*) So much of this section as relates to the taking of elvers or the fry of eels is repealed; see Salmon Fishery Act, 1876, s. 1.

(*n*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*; third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

or 100 yards
below a weir
or mill races
except with
rod and line.

disturb, any salmon within fifty yards above or one hundred yards below any weir (o), dam, or artificial obstruction which hinders or retards the passage of salmon, or in any waters under or appurtenant to any mill, or in the head race or tail race of any mill, or in any waste race or pool communicating with such mill race, or in any artificial channel connected with such weir or obstruction; and no person shall fish with rod and line in such a manner, or such a place, near such weir or obstruction, as to wilfully scare or hinder salmon from passing through any fish pass, or over any part of such weir or obstruction usually available to salmon for the purposes of a passage. Any person acting in contravention of this section shall incur a penalty (p) not exceeding five pounds for each offence, and a further penalty not exceeding one pound for every salmon so caught, and shall forfeit all boxes, baskets, nets, rods, implements, or devices used or placed for catching the same; provided that nothing in this section shall be deemed to apply to any legal fishing mill dam not having a crib, box, or cruiwe, or to any fishing box, coop, apparatus, net, or mode of fishing in connexion with and forming part of such weir or obstruction for purposes of fishing: Provided, that where a fish pass approved by the Board of Trade, in pursuance of the twelfth section of the Salmon Fishery Act, 1861, has been or shall be attached to such weir, dam, or artificial obstruction, this section shall not be enforced in respect of such weir or artificial obstruction until compensation has been made by the conservators of the district to the persons entitled to fish in such waters for such right of fishery, such compensation to be settled in case of dispute in manner in which disputed compensation as to lands is directed to be settled under the Lands Clauses Consolidation Acts.

Amendments
of "Salmon
Fishery Acts,
1861 and
1865."

212, 218

18. The following sections of "The Salmon Fishery Act, 1861," and "The Salmon Fishery Act, 1865," shall be respectively amended in the following manner; (that is to say,)

- (1.) The eighth section of "The Salmon Fishery Act, 1861," shall be construed as if the words "otter lath or jack, wire, or snare" were inserted after the word "any," and as if the words "or killing" were inserted after the word "catching" in the second sub-section, and as if the words "or kill" were inserted after the words "to catch" in the third sub-section:
- (2.) The eleventh section of "The Salmon Fishery Act, 1861," shall be construed as if the words "or for the purpose of

(o) Weir means a fishing mill-dam, not a fishing weir, because the proviso to this section refers to fish-passes, which are an adjunct to fishing mill-dams, and not of fishing weirs.

(p) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and 10*s.* to 1*l.* for each salmon; third offence, 5*l.*, and 1*l.* for each salmon: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

facilitating the catching of salmon, or detaining or obstructing the free passage of," were inserted after the words "used for catching :"

- (3.) The fourteenth section of "The Salmon Fishery Act, 1861," shall be construed as if the words "kill or injure or attempt to take" were inserted after the words "wilfully take" in the first sub-section of the first part thereof, and the words "in respect of each fish taken, sold, or exposed for sale, or in his possession" in the second sub-section of the second part thereof were omitted, and the words "for each such offence, and a further penalty of one pound in respect of each fish taken, sold, or exposed for sale, or in his possession" were inserted in lieu thereof :
- (4.) The fifty-sixth section of the Salmon Fishery Act, 1865, shall be construed as if the words "or less than one month" were inserted after the words "six months :"
- (5.) The fifty-seventh section of the Salmon Fishery Act, 1865, shall be read as if the words "1861 and 1865" were omitted, and the words "1861 to 1873, and under any byelaw made under the authority of this Act" were inserted in lieu thereof ; but it shall not be imperative on any justices under the provisions of such section to inflict a greater penalty than fifty shillings for a second offence, or than five pounds for a third offence under the Salmon Fishery Acts, 1861 to 1873 :
- (6.) The sixtieth section of "The Salmon Fishery Act, 1865," shall be construed as if the words "or young of salmon" were inserted throughout after the words "unclean or unseasonable salmon :"
- (7.) The sixty-fourth section of the Salmon Fishery Act, 1865, shall be read as if the word "October" were substituted for the word "November," and as if the word trout included the word char :
- (8.) The provisions of the fourteenth section of the Salmon Fishery Act, 1861, and the thirty-eighth section of this Act shall be read as if the word salmon included the words trout and char.

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19. No person shall buy, sell, or expose for sale, or have in his possession for sale, any salmon or part of any salmon between the third day of September and the first day of February following, both inclusive. And any person acting in contravention of this section shall forfeit any salmon or part of any salmon so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty (7) not exceeding two pounds for every such salmon or part

Penalties on
selling fish
during close
time.

224, 225

(7) Second offence penalty must be 1*l.* to 2*l.* for each salmon ; third offence. 2*l.* : Salmon Fishery Act, 1865, s. 57 ; Salmon Fishery Act, 1873, s. 18 (5).

of any salmon. But nothing herein contained shall apply to any person buying, selling, or exposing for sale, or having in his possession for sale, any salmon which has been cured, salted, pickled, or dried beyond the limits of the United Kingdom, or if within the limits of the United Kingdom between the first day of February and the third day of November in any year, or any clean fresh salmon caught within the limits of this Act, provided its capture by any net, instrument, or device other than a rod and line (*r*), was lawful at the time and in the place where it was caught, or to any clean fresh salmon caught at any time beyond the limits of this Act, provided its capture by any net, instrument, or device other than a rod and line, if within the United Kingdom, was lawful at the time and in the place where it was caught; but the burden of proving that any clean fresh salmon so bought, sold, exposed for sale, or in the possession of any person for sale was captured abroad or lawfully captured with the United Kingdom, shall lie on the person selling or exposing for sale, or having in his possession for sale any such salmon; and the burden of proving that any cured, salted, pickled, or dried salmon was cured, salted, pickled, or dried elsewhere than in the United Kingdom, or if within the United Kingdom, then between the first day of February and the third day of November in any year, shall lie upon the person in whose possession for sale such salmon is found.

Penalty on
selling trout
or char
during close
time.

224, 225

20. No person shall buy, sell, or expose for sale, or have in his possession for sale, any trout or char between the second day of October and the first day of February following, both inclusive; and any person acting in contravention of this section shall forfeit any trout or char so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty (*s*) not exceeding one pound for every such trout or char.

PART IV.

LICENSES.

[In the event of the powers conferred by the Freshwater Fisheries Act, 1878, s. 7, being enforced, the word salmon when used in this part of this Act includes trout and char.]

Provisions as
to licenses.

207, 222 223

21. The following rules shall apply to the issuing of licenses :

- (1.) Licenses for fishing weirs, fishing mill dams, putts, putchers, fixed nets, and other fixed instruments or devices, and for moveable nets and other moveable instruments or devices, and also for rods and lines for catching salmon within a

(*r*) It would seem that salmon caught by rod and line after 1st September cannot be sold.

(*s*) Second offence penalty must be 10s. to 1*l.* for each fish; third offence, 1*l.* for each fish: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5). This section applies although the fish were caught elsewhere than in England and Wales; see *Price v. Bradley*, (1885) 16 Q. B. D. 148.

fishery district, shall be granted on payment of such sums not exceeding the sums mentioned in the third schedule hereto as the board of conservators of the district, with the sanction of the Board of Trade, may from time to time determine :

- (2.) Licenses shall only be available within the fishery district for which they are granted. Licenses granted for public or common fisheries shall be available only for such fisheries. Licenses granted for private fisheries shall not be available in public or common fisheries, except licenses for the use of a rod and line :
- (3.) Licenses for fishing weirs, fishing mill dams, putts, putchers, fixed nets, and other fixed instruments or devices for catching salmon, shall be available only for the use of the persons to whom they are granted, and for the employment of such instruments and devices as are named and described therein :
- (4.) Licenses for moveable nets or other moveable instruments or devices for catching salmon shall be used only by the person to whom they are granted, or his agents or servants, and in respect of the instrument for which they are granted, and no person shall be deemed to be an agent or servant of a licensee for the purposes of this section unless his name is endorsed on the license, either by the licensee or his authorised agent, or by the clerk or other persons authorised by the conservators, and the conservators shall make arrangements for facilitating the endorsement of the names of agents or servants of licensees by their clerk or other persons authorised as aforesaid. A fee of sixpence shall be payable to such clerk or other person authorised as aforesaid in respect of the endorsement of the name of any agent or servant on a license, in pursuance of this section, by any person requiring the same, if made by the clerk or other person authorised by the conservators, or by the licensee in case of the endorsement being made by him or his authorised agent. A licensee shall not be entitled to have endorsed on his license the names of agents or servants exceeding twice the number of persons required to work at one time the net, instrument, or device in respect of which the license is granted. Any licensee may from time to time remove or cause to be removed the name of any agent or servant from his license, and, if he so desire, may substitute or cause to be substituted the name of another agent or servant, on payment of a like fee for the name of each person so substituted ; but no endorsement made by the licensee or his authorised agent shall be valid unless a copy thereof shall, within twenty-four hours from the date thereof, which

date shall be inserted on the license at the time of making such endorsement as aforesaid, be sent by post to such clerk or other person authorised as aforesaid, accompanied with such fee or fees as are payable under this section in respect of such endorsement, and no person shall be deemed to be an authorised agent of the licensee for the purposes of this sub-section unless his name and address and notice of his appointment as an authorised agent shall have been sent by post to the clerk or other person authorised by the conservators previously to any endorsement being made by such authorised agent: Provided always, that if a licensee at any time during a fishing season, either works or assists in working a moveable net or other moveable instrument or device himself, the number of names which he shall be entitled to have endorsed on the license for such moveable net or other moveable instrument or device shall be one less than twice the number of persons required at one time to work such moveable net, instrument, or device. Any licensee or authorised agent of a licensee who fraudulently endorses on the license more names than he is entitled to have endorsed thereon, or who endorses thereon any date other than the actual date of the making of such endorsement, shall be liable on conviction thereof to a penalty not exceeding twenty pounds:

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- (5.) A license for the use of a rod and line shall be used only by the person to whom it is granted, and shall in no case be transferable.

Penalty on
taking salmon
without a
license.

217, 219, 223

22. In all fishery districts in which licenses are payable under the provisions of "The Salmon Fishery Act, 1865," or this Act, any person fishing for, taking (*t*), killing, or attempting to take or kill, salmon by any means whatsoever other than a properly licensed fishing weir, fishing mill dam, fixed engine, instrument, net, or device for catching or facilitating the catching of salmon, or assisting any such person in so doing, shall be liable to a penalty (*u*) not exceeding five pounds, and a further penalty of not exceeding one pound in respect of each salmon so caught: Provided that this section shall not prevent the use of a gaff or landing net as auxiliary to any holder of a rod license angling with a rod and line, and that nothing herein contained shall affect the provisions of the thirty-fifth and thirty-sixth sections of "The Salmon Fishery Act, 1865."

(*t*) Taking in this section only relates to live fish; consequently a person who without a license picks up a dead fish on the shore does not commit a breach of this section: *Gazard v. Cooke*, (1890) 55 J. P. 102; but a person who picks up a dying fish does: *Stead v. Tillotson*, [1900] 64 J. P. 343.

(*u*) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and 10*s.* to 1*l.* per fish; third offence, 5*l.*, and 1*l.* per fish: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

23. The conservators of a district may expend any moneys in their hands in any manner, not being illegal, they may think most conducive to the improvement of the salmon fisheries within their district.

Application of funds in the hands of the conservators.

207

24. In every fishery district the maximum duty payable in respect of any license for the use of any rod and line, fishing weir, fishing mill dam, putt, putcher, net, and other instrument or device for taking salmon shall not exceed the sums mentioned in the third schedule hereto.

Scale of licenses.

223

25. The board of conservators may, with the consent and approval of the Board of Trade, from time to time vary the license duties leviable within their district, and vary the license duties leviable on similar instruments in different parts of the district, specifying in the licenses the portions of the rivers in which the said licensed instruments may be used, so, however, that the license duties so varied shall not exceed the sum mentioned in the third schedule hereto: Provided, that in the event of any variation in the said scale of license duties being agreed upon, the board shall cause notice thereof to be given by advertisement in one or more local newspapers not less than once in each week for four consecutive weeks before the commencement of the next fishing season; and if from any mistake or error or any other cause such variation shall not have been duly made and published, the scale of licenses in force during the preceding year shall be deemed to be in force for all purposes whatsoever, and shall so continue until it shall be duly altered or varied under the provisions of this Act.

Board may vary license duties with the approval of the Board of Trade.

207, 223

PART V.

CONSTITUTION OF BOARDS OF CONSERVATORS.

(i.) *Ex-officio Members.*

26. In addition to the elected members of any board of conservators for any fishery district, every person shall be an ex-officio member of such board who possesses either of the qualifications herein-after mentioned; (that is to say,)

Ex-officio members of board of conservators.

204

- (1.) Is the owner or occupier of a fishery or fisheries in such fishery district, which is or are assessed to the rate for the relief of the poor on a gross estimated rental of thirty pounds a year; provided that in no case shall both the owner and occupier be entitled to act at the same time as ex-officio members in respect of the same fishery or fisheries; and if there be more than one such owner or occupier of the same fishery or fisheries, then any one of such owners or occupiers:
- (2.) Is the owner of lands in such fishery district of an annual value of not less than one hundred pounds, having a

frontage of not less than one mile to any salmon river (*x*) (in ascertaining such distance the frontage on both sides of the river to be counted), having the right to fish in the part of the river adjoining such frontage, and having paid license duty for fishing for salmon within such district during the last preceding fishing season.

Provision for persons under disability.

27. In all cases where the owner of any fisheries or lands possessing either of the aforesaid qualifications for ex-officio members of the said board of conservators shall be a minor, idiot, lunatic, feme covert, or under any legal disability, or shall be a corporation, company, or fishery association, one of the guardians or trustees of such minor, the committee of the estate of such idiot or lunatic, the husband of such feme covert, one of the members of such corporation, company, or fishery association, or the attorney or agent of such guardian, trustee, committee, husband, corporation, company, or fishery association (respectively) shall be entitled to act as an ex-officio member of the board of conservators of the district within which such fisheries or lands are situate.

Ex-officio members to sign a declaration.

28. Any person claiming to be entitled to act as an ex-officio member of any board of conservators for any fishery district shall, previously to taking his seat at any such board, or taking any part in the proceedings thereof, or acting in any way as a member of such board, sign a declaration in such form as the board shall prescribe, setting forth the nature of the qualification in respect of which he claims to be entitled to act; and any person wilfully making any false declaration or acting before having made such declaration, having been required to do so, shall be liable to a penalty of not exceeding five pounds; and every ex-officio member having signed such declaration as aforesaid shall be entitled to act as a member of the board so long only as he continues to hold such qualification, and in case of any alteration being made in any fishery district, in pursuance of the provisions contained in Part II. of this Act, he shall be entitled to act only in that district where his qualification exists.

(ii.) *Representative Members.*

Additional members of boards of conservators.

204

29. In addition to the members of any board of conservators appointed under the provisions of "The Salmon Fishery Act, 1865," in all fishery districts in any part of which there are any public or common rights of fishing, and where such rights are exercised by fishermen duly licensed to fish for salmon (otherwise than with rod and line), all persons who have taken out licenses to fish in such public or common waters or both (other than licenses for the use of a

(*x*) In this section "salmon river" means any river frequented by salmon trout or char or freshwater fish: Freshwater Fisheries Act, 1879, s. 6; Freshwater Fisheries Act, 1884, s. 2.

rod and line), during the last preceding fishing season, shall be entitled to elect such number of additional members to represent them at the board of conservators for such district as are hereinafter mentioned ; (that is to say,)

If the aggregate amount of license duty paid for fishing in public or common waters or both (other than licenses for the use of a rod and line) does not exceed the sum of fifty pounds, one member :

And if the aggregate amount of license duty exceed that sum, one additional member for every additional fifty pounds or part of fifty pounds.

30. The election of such additional members shall be held in accordance with the following provisions ; (that is to say,)

Rules as to
election of
members.

204

(1.) The board of conservators shall hold a meeting after the commencement of the annual close season, in each year ; at such meeting the clerk of the board shall produce a statement of the license duty paid in the district during that year, and the board shall thereupon ascertain and declare the amount of license duty paid in respect of licenses for fishing otherwise than with rod and line in public or common waters or both, and the number of representative members for the ensuing year :

(2.) The first meeting of the new board of conservators shall be held annually upon such day after the day fixed for the election of such additional members in each year as the chairman of the board for the preceding year shall appoint :

(3.) Within a reasonable time before the first meeting of any board of conservators in every year, the returning officer shall sign and publish a notice specifying the number of members to be elected and shall send a copy of such notice by post, with a nomination paper, in the form contained in the first schedule hereto, to each person qualified to vote under the last preceding section, and who shall be either resident within, or the owner of land within, or within ten miles of the boundary of the fishery district in respect of which such license was issued :

(4.) The notice shall specify the last day on which the nomination papers are to be sent to the returning officer :

(5.) Any person entitled to vote may fill up such nomination paper with his own name, or with the name or names of any other person or persons (not exceeding the number of persons to be elected), and send such nomination paper by post to the returning officer on or before such specified day. If the number of persons nominated shall be the same or less than the number of persons to be elected, such persons shall be deemed to be duly elected for one year, or until the next

annual election, and shall be certified as elected by the returning officer under his hand :

- (6.) If the number nominated exceed the number to be elected, the returning officer shall send by post a voting paper in the form contained in the second schedule hereto, containing in alphabetical order the names of all persons nominated, to each person entitled to vote, and shall specify a day, not less than five days or more than ten days from the date of sending such voting paper, upon which such voting paper is to be returned to him :
- (7.) Every voter shall, in the presence of a witness, write his initials or make his mark against the name or names of the person or persons (not exceeding the number to be elected) for whom he intends to vote, and shall insert the number of votes he intends to give to each person, and shall strike out the name or names of every other person or persons, and sign the voting paper with his name and address. In case the voter cannot write, such witness shall attest and write his own initials against the name of every candidate for whom the voter intends to vote, and against the mark of such voter, and shall fill up the number of votes given to each candidate. In every case such witness shall subscribe his own name and address to such voting paper :
- (8.) Each voter shall be entitled to vote according to the following scale ; that is to say,
 - If the license duty paid by him shall exceed one pound and not exceed two pounds, one vote for each member to be elected :
 - If the license duty shall exceed two pounds but not exceed five pounds, two votes for every such member :
 - If the license duty shall exceed five pounds and not exceed ten pounds, three votes for every such member :
 - If the license duty shall exceed ten pounds and not exceed twenty pounds, four votes for every such member :
 - If the license duty shall exceed twenty pounds, five votes for every such member :
- (9.) A voter may give all such votes to any one of the persons nominated, or may distribute them amongst such of the persons nominated, not exceeding the number to be elected, as he shall think fit :
- (10.) The voter shall send the voting paper by post to the returning officer, duly filled up and attested as aforesaid, on or before the day mentioned therein :
- (11.) In case any person entitled to vote shall not have received a voting paper, he shall be entitled, on his personal application to the returning officer, before the day fixed for the return of

the voting papers, to receive and fill in a voting paper in manner aforesaid :

- (12.) The returning officer, within four days after the day fixed for the return to him of the voting papers, shall inquire into the validity of the votes given, and cast up and ascertain the number of valid votes given to each person nominated, and the persons in accordance with the number to be elected who shall have obtained the greatest number of valid votes shall be deemed to be elected, and the returning officer shall certify them to be so under his hand :
- (13.) The returning officer shall make out a list containing the names of all persons nominated, together with the number of valid votes (in case of a contest) given to each person nominated, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting papers, to the board of conservators at their next meeting ; and such list shall be open to the inspection of all license payers without fee or reward :
- (14.) The returning officer shall, immediately after ascertaining the persons elected, send by post to each person so elected a notice of his election, and shall publish the names of the persons so elected in such newspaper or newspapers circulating within the district as the board shall direct :
- (15.) If upon casting up the votes the returning officer shall find that an equal number of votes has been given for two or more persons, one or more of whom only is or are entitled to be elected, he shall, in the presence of two or more witnesses, determine by lot which of such persons is or are elected, and the person or persons so determined shall be deemed to be for all intents and purposes duly elected member or members of the board as if he or they had obtained a majority of the votes at such election :
- (16.) Any casual vacancy occurring by death, resignation, or otherwise, among such additional members of the board of conservators, may be filled up by the board ; but the member chosen to fill such vacancy shall hold his office for such time only as the member vacating would have held the same if no vacancy had occurred.

31. The returning officer shall, at the first meeting of the board of conservators after any such election as aforesaid, lay before the board an account of the expenses incurred by him in conducting such election. And the board of conservators shall thereupon cause the same to be audited, and may disallow any item they consider to be excessive or illegal ; and shall forthwith pay the amount found due to the returning officer, and in default of payment the returning

Returning officer to recover expenses.

officer shall be entitled to recover from the board of conservators in a summary manner whatever shall be found due to him after such accounts have been audited.

Penalty on returning officer for wilful neglect of provisions as to elections.

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Penalty for personating voters, &c.

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32. At any such election, if the returning officer wilfully neglects or refuses to comply with any of the provisions of this Act, he shall be liable for every such offence to a penalty not exceeding five pounds.

33. At any such election, if any person or persons wilfully fabricate in whole or in part, or alter, deface, destroy, abstract, or purloin any voting paper, or personate any person entitled to vote, or falsely assume to act in the name or on behalf of any person so entitled to vote or attest the execution of any voting paper, such person or persons shall be liable on conviction thereof to a penalty not exceeding twenty pounds, or to be imprisoned for any time not exceeding three months, with or without hard labour.

Continuance of old boards ; ratification of their proceedings.

34. Nothing in this Act contained shall be held to invalidate anything done or suffered to be done before the passing thereof, by any board of conservators formed under the powers and authority of "The Salmon Fishery Act, 1865," and all the proceedings and acts of such boards shall be as valid and effectual as if this Act had not been passed. And the proceedings of all boards of conservators after the passing of this Act shall accordingly be subject and without prejudice to everything so done or suffered to be done, and to all rights, liabilities, claims, and demands, both present and future, which would if this Act had not been passed be incident to and consequent on any or every thing so done or suffered to be done, and the proceedings, and all proceedings of boards of conservators under this Act, shall be deemed a continuation of and form a part of the proceedings of boards of conservators constituted under "The Salmon Fishery Act, 1865." And the boards of conservators appointed under this Act shall to all intents and purposes represent and be deemed a continuation of the boards of conservators appointed under the provisions of "The Salmon Fishery Act, 1865." And no act or proceeding of any board of conservators appointed under the provisions of "The Salmon Fishery Act, 1865," or of this Act, shall be questioned on account of any vacancy or vacancies in their body, and no defect in the qualification or appointment of any person or persons acting as member or members of any board of conservators shall be deemed to vitiate or affect any proceedings of such board in which he or they may have taken part.

Evidence of proceedings at meetings.

35. Any minute made of proceedings at a meeting of a board of conservators, signed by the chairman of such meeting, or by the chairman of the next meeting of the board, shall be receivable in evidence in all legal proceedings without further proof ; and until the contrary is proved every meeting of the board in respect of the

proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified.

PART VI.

POWERS OF WATER BAILIFFS.

36. Any water bailiff^(y) appointed under "The Salmon Fishery Acts, 1861 to 1873," acting within the limits of his district, may do all or any of the following things; (that is to say,)

Powers of
water bailiff.
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- (1.) Examine any weir, dam, fishing weir, fishing mill dam, fixed engine, or obstruction, or any artificial watercourse connected with any salmon river; and any person refusing to any water bailiff access to any such weir, dam, fishing weir, fishing mill dam, fixed engine, obstruction, or watercourse, shall be liable for every such offence to a penalty not exceeding five pounds:
- (2.) Stop and search on any salmon river any boat, barge, coracle, or other vessel used in fishing, or which there is reasonable cause to suspect contains any salmon, and seize any fish, instrument of fishing, or other articles forfeited in pursuance of "The Salmon Fishery Acts, 1861 to 1873;" and any person refusing to allow any such boat, barge, coracle, or other vessel to be stopped and searched, or resisting or obstructing any water bailiff in any such search, shall for every such offence be liable to a penalty not exceeding five pounds:
- (3.) Search and examine all nets, baskets, bags, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of "The Salmon Fishery Acts, 1861 to 1873;" and any person refusing to allow any nets, baskets, bags, or other instruments used in fishing or in carrying fish to be searched or examined, or resisting or obstructing any water bailiff in any such search or examination, shall for every such offence be liable to a penalty not exceeding five pounds:

(y) The water bailiff is bound, before attempting to exercise his power of searching boats, &c., to produce the instrument of his appointment, because, as Lord Coleridge said, "He (the bailiff) has no authority until he shows his authority. The production of his appointment by the board of conservators is notice to the person against whom he is seeking to exercise the powers conferred upon him by the statutes, that he is a water bailiff, and is intended to prevent resistance, and to put the offender from that moment in the wrong. Without proof of the production of his appointment by the water bailiff any prosecution by him for penalties under the Salmon Fisheries Acts must fail": *Barnacott v. Passmore*, (1887) 19 Q. B. D. 75. It is not necessary that he should read it; if he offers it for inspection that is sufficient to show that he is authorised to act: *Cowler v. Jones*, (1890) 54 J. P. 660.

(4.) For the enforcement of the provisions of "The Salmon Fishery Acts, 1861 to 1873," every water bailiff shall be deemed to be a constable, and to have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed now has or is subject to in his constableness, by virtue of the common law of the realm or of any statute (z):

209 (5.) The production by a water bailiff of the instrument of his appointment, executed in the manner prescribed in "The Salmon Fishery Act, 1865" (a), shall be a sufficient warrant for any water bailiff exercising the authorities given to him under "The Salmon Fishery Acts, 1861 to 1873."

Water bailiff
may enter on
land.

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37. Any water bailiff may under a special order (b) in writing from the board of conservators, signed by the chairman for the time being of such board, for this purpose at all reasonable times enter, remain upon, and traverse any lands, not being a dwelling-house or the curtilage thereof, adjoining or near to any salmon river within the fishery district of such board, for the purpose of preventing any breach of the provisions of "The Salmon Fishery Acts, 1861 to 1873;" and no water bailiff entering, remaining upon, or traversing any land in pursuance of such order shall be deemed a trespasser. Provided always, that this section shall not apply to decoys or lands used exclusively for the preservation of wild fowl, and that no such order shall remain in force for more than two months from the date thereof. But nothing herein contained shall affect any other powers of search conferred by "The Salmon Fishery Acts, 1861 to 1873" (c).

Persons fish-
ing illegally at
night may be
apprehended.

209

38. If any person, between the expiration of the first hour after sunset on any day and the beginning of the last hour before sunrise of the following morning, illegally takes or kills salmon (d), or is found on or near any salmon river with intent illegally to take or kill salmon, or having in his possession for the capture of salmon any instrument prohibited by the Salmon Fishery Acts, 1861 to 1873, it shall be lawful for any water bailiff, together with any assistants, to seize and apprehend any such offender without warrant, and to deliver him, as soon as may be, into the custody of a peace officer,

(z) See *Pollock v. Moses*, (1894) 70 L. T. 378; *Anderson v. Hamlin*, (1890) 25 Q. B. D. 221, and the Fisheries Act, 1891, s. 13.

(a) See sect. 27 of that Act.

(b) A water bailiff who has an order signed by the chairman of the conservators authorising him to enter upon all lands adjoining any salmon river within the fishery district has a special order within the meaning of this section, and the owner of lands who resists the bailiff in the performance of his duty incurs the same penalty as if resisting a constable: *Heseltine v. Myers*, (1894) 58 J. P. 689.

(c) See Salmon Fishery Act, 1861, s. 34; Salmon Fishery Act, 1865, s. 31; and previous section and sect. 56, *post*.

(d) In this section salmon includes trout and char; see sect. 18 (8), *ante*, p. 309.

in order to his being conveyed before two justices of the peace for the purpose of being convicted in the penalty assigned for his offence (*d*).

PART VII.

BYELAWS.

[Subject to the provisions of this part of this Act, a board of conservators may at any time after 1st September, 1876, make byelaws to alter the close time for trout or char within their district: see the Salmon Fishery Act, 1876; Freshwater Fisheries Act, 1878, s. 10, *post*, p. 342.]

39. Subject to the provisions hereinafter contained for the confirmation and publication of byelaws, a board of conservators may make byelaws for the better execution of "The Salmon Fishery Acts, 1861 to 1873," and for the better protection, preservation, and improvement of the salmon fisheries within their district, and alter the same from time to time for all or any of the following purposes; (that is to say,)

Boards may
make byelaws
for certain
purposes.
**207, 213,
220**

- (1.) To alter the commencement and termination of the annual close season as to the whole or part of the district, so that such close season, when so altered, shall not be less than one hundred and fifty-four days, for all modes of salmon fishing, except with rod and line, and shall not commence later than the first of November in each year, and as regards fishing with rod and line, so that such close season shall not be less than ninety-two days, and shall not commence later than the first of December in each year:
- (2.) To alter the commencement and termination of the weekly close season as to the whole or part of a district, so that such season shall not commence before six o'clock on Friday afternoon, and not terminate earlier than midnight on the Sunday following, nor continue later than twelve o'clock on the following Monday at noon, such weekly close time in no case to exceed forty-eight hours:
- (3.) To determine the length, size, and description of nets, and the manner of using the same (not being fixed engines) for taking salmon: Provided that no byelaw made under the authority of this section shall limit the length of a hang net, or limit the length of a draft net so as to be less than two hundred yards:
- (4.) To determine the minimum size of the mesh of nets for catching salmon that shall be lawfully used within the district, so that such mesh shall not be less than one and a half inch from knot to knot, and so that no person shall be

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(*d*) "Salmon" in this section includes trout and char: see *ante*, s. 18, sub-s. 8.

compelled to use a mesh larger than two and a half inches, measured when wet :

- (5.) To determine the form of license and the manner in which licenses shall be issued, provided that different forms be used for licenses for fishing in public or common and in private fisheries :
- 223 (6.) To vary the rate of license duty in different parts of the district, in respect of the length or size of the net used, so that such duty shall not exceed the sum mentioned in the third schedule hereto :
- (7.) To determine what marks, labels, or numbers shall be attached to licensed nets, or painted upon or affixed to boats, coracles, or other vessels used in fishing :
- 214 (8.) To prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers in any part of the district (not being a several fishery), and to erect and fix posts, buoys, and landmarks to indicate such distances respectively :
- 212 (9.) To determine the time during which it shall be lawful to use a gaff in connection with a rod and line :
- 219 (10.) To determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel, so, however, as not to diminish the supply of water to any mill, nor to interfere with the passage of vessels or otherwise injure any inland navigation or lock, but so that the provisions of the thirteenth section of the Salmon Fishery Act, 1861, shall not be affected :
- (11.) To regulate during the annual and weekly close seasons the use within any river of nets for fish other than salmon, when such use at such times is prejudicial to the salmon fisheries (e) : Provided that nothing in this sub-section contained shall authorise anything to be done which shall affect any part of any river in which part there is a several right of fishery, or any river or part of any river where the breadth at low water is greater than six miles :
- 207, 214 (12.) To prohibit the use in any inland water of any net, except a landing net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise :

(e) The conservators have only power to make byelaws regulating the use or prohibiting the use of nets, when the use of nets would be prejudicial to the salmon fisheries, and they have no power to make a byelaw which absolutely prohibits the use of every net without regard to the question whether such net was prejudicial or not : *Pidler v. Berry*, (1888) 59 L. T. 230 ; *Wood v. Venton*, (1890) 54 J. P. 662.

And the said board may, by any such byelaw, impose a penalty (*f*) not exceeding the sum of five pounds for each offence against such byelaw; such penalties shall be recovered and applied in manner hereinafter provided: Provided always, that such byelaw, having been reduced to writing and sealed with the common seal of the board, shall be confirmed and published in manner hereinafter provided, and shall be so framed as to allow the justices before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid: Provided also, that no byelaw shall be made unless notice of an intention to propose the same shall have been given in the notice convening the meeting of the conservators at which it is intended to propose such byelaw, which notice shall be issued one fortnight at least before the date of such meeting.

40. A board of conservators may make any byelaw to apply to the whole or to any part or parts of their district, and to the whole or any part or parts of the year, and may from time to time by any new byelaw revoke, vary, or alter, either in whole or in part, or as to its application to the whole or to any part or parts of the district, any byelaw previously made, and may from time to time vary any byelaw made in respect of the whole or any part or parts of the district, and may from time to time except or exclude from the operation of all or any of the byelaws, any part or parts of the district, or extend the operation of any byelaw made for any part or parts of the district to the whole or other parts of the district.

Byelaws may apply to all or part only of a district, and to whole or parts of a year.

41. No byelaw made by such board of conservators shall come into operation until the same be confirmed by the Board of Trade, who may direct an inquiry into the same at such time and place, and before such persons, and after giving such notices as they shall think fit; and with or without such inquiry they may allow or disallow the said byelaws as they shall think fit: Provided that if at any time before the confirmation of any byelaw for any purpose mentioned in sub-sections one, two, three, four, or eight of section thirty-nine, any owner or occupier of any fishery or any licensee who would be affected by such byelaw shall, by notice in writing to the Board of Trade, object thereto, and shall give such security for the payment of any costs attending the inquiry and the notice hereinafter mentioned as the Board of Trade may require, the Board of Trade shall either disallow such byelaw or cause a public inquiry to be held in some convenient place by such person or persons as they may appoint, when all persons interested may have the opportunity of being heard; and

Byelaws not to come into operation until confirmed by the Board of Trade.

(*f*) For a second offence the penalty must be more than half the penalty for first offence, but need not exceed 2*l.* 10*s.*; for third offence it must be the full amount imposed by the byelaw: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

after such inquiry the Board of Trade shall either disallow such byelaw or give one month's notice of their intention to allow the same by advertisement in some newspaper or newspapers circulating in the district affected thereby.

Byelaws to be open to inspection before application to confirm them.

42. For one month at least before any application for confirmation of any byelaws, notice of the intention of the said board to apply for such confirmation shall be given once in each week by advertisement in one or more newspapers circulating in the district, and a copy of the proposed byelaws shall be kept at the office of the board, or some place to be appointed by the chairman for that purpose, and all persons may at all reasonable times inspect such copy without fee or reward, and the said board shall furnish every person who shall apply for the same with a copy thereof, or of any part thereof, on payment of one penny.

Byelaws when confirmed to be printed and published.

43. The said byelaws when confirmed shall be printed, and the secretary or clerk to the said board shall deliver a printed copy thereof to every person who shall pay license duty without charge, and a copy thereof shall be placed and renewed from time to time, on boards, or put up in some conspicuous place or places within the district, and shall be open to inspection without fee or reward; and in case the said secretary or clerk shall wilfully refuse to deliver or to allow the same to be inspected as aforesaid, he shall for every such offence be liable to a penalty not exceeding five pounds.

Byelaws when confirmed and published to be binding on all persons.

44. Any byelaw made, confirmed, and published according to the provisions of this Act, shall be binding and be observed by all parties, and shall be sufficient to justify all persons acting under the same.

Byelaws proved by copy having seal of board and publication in newspapers.

45. The production of a written or printed copy of any byelaw purporting to have been confirmed, authenticated by the common seal of the board, shall be conclusive evidence of the existence and due making of such byelaw in all legal proceedings, and the production of a copy of any newspaper or newspapers containing the notice of the making of any such byelaw shall be taken and received in all legal proceedings as evidence that all things required by this Act for the making and publication of the byelaw therein advertised have been duly done, performed and published.

PART VIII.

WEIRS AND FISH PASSES.

Penalty on all persons rebuilding weirs and making new weirs without fish passes,

46. Every person who in any salmon river, since the sixth day of August one thousand eight hundred and sixty-one, has created, caused, or increased, or who hereafter shall create, cause, or increase any obstruction to the passage of salmon, or who rebuilds or reinstates a weir or dam which from any cause shall have been

destroyed or taken down to the extent of one half of the length of such weir, dam or obstruction, shall make a fish pass for salmon of such form and dimensions as the Board of Trade shall approve, as part of the structure thereof, if none already exists, and every person who omits or fails to make such fish pass in such weir, or who newly builds a weir without providing such fish pass, or who raises or alters any existing weir in whole or part, so as to cause increased obstruction to the passage of salmon, or who makes or continues any obstruction whatsoever to the passage of salmon without lawful authority, shall incur a penalty of not exceeding twenty pounds for every such offence, and a further penalty of not exceeding two pounds for every day during which such offence is continued, commencing from the date of the first conviction; and it shall be lawful for the Board of Trade to cause to be done any work by this section required to be done by such person, and to recover the expenses of doing the same in a summary manner from such person, or from the owner or occupier of such obstruction who shall neglect to do the same. But this section shall not authorise anything to be done that may injuriously affect any navigable river, canal, or inland navigation, public waterworks, dock or docks, the supply of water to which is obtained from any navigable river, canal, or inland navigation, under the provisions of any Act of Parliament, nor shall anything in this section or in the twenty-fifth section of "The Salmon Fishery Act, 1861," prevent any person from removing a fish pass for the purpose of repairing or altering such obstruction, so that within a reasonable time he restore such fish pass in as effectual a state as it was before he removed the same; and for the purpose of this section the owner or occupier of any such obstruction for the time being shall be deemed to be the person who created or caused or increased such obstruction in manner aforesaid (g).

and raising
or altering
weirs so as to
increase
obstruction to
passage of
salmon.

47. In case any member of the board of conservators of the district is the owner of any weir, dam, fishing mill dam, or obstruction, nothing in "The Salmon Fishery Acts, 1861 to 1873," shall prevent the board paying to such member any compensation in respect of the same, provided that such member does not vote in respect of the payment of any such compensation to himself.

Member of
board may
recover
compensation.

48. Any person wilfully altering or injuring any fish pass, or doing any act whereby fish are obstructed or liable to be obstructed in using such fish pass, or whereby such fish pass is rendered less efficient, or altering the bed or banks of the river so as to render any fish pass less efficient, or using any contrivance or doing any

Penalty on
injuring and
rendering
fish pass
inefficient.

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(g) Weir in this section must refer to a weir for keeping up water, and not to a fishing weir, for fishing weirs have to have free gaps and not fish-passes; see Salmon Fishery Act, 1861, ss. 23, 27, and 28, and Salmon Fishery Act, 1873, s. 49.

act whereby fish are in anywise liable to be scared, hindered, or prevented from passing through such fish pass, shall for every such offence incur a penalty^(h) of not exceeding five pounds, and a further penalty of not exceeding one pound for every day during which any such alteration, obstruction, or contrivance is continued from the date of a second conviction for such offence, in addition to any expense which may be incurred in restoring such fish pass to its former state of efficiency.

Board, if
desirous of
acquiring
compulsorily
a weir or ob-
struction for
the purposes
of removal,
may petition
Board of
Trade.

207
216, 217
219

49. Where any board of conservators shall be of opinion, having regard to the prejudicial effect upon the salmon fisheries of their district, caused by any weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction which hinders the passage of fish, that it would be beneficial to such fisheries if such weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction should be removed, in whole or in part, but the owner thereof shall be unwilling or unable to treat, or they cannot agree to the terms of purchase thereof, and such board shall be desirous of obtaining authority to acquire compulsorily the property of such weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction, and premises, for the purposes of such removal, such board may, after giving one month's notice of their intention to the owner thereof, present a petition to the Board of Trade praying that such board may, with reference to such weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction, and the premises used in connexion therewith, be allowed to put in force the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Board of Trade may require.

Upon the receipt of such petition, and upon due proof of notice being given to the owner and occupier of such weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction, the Board of Trade, after satisfying themselves that the board are provided with funds for the purchase of such weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction, and the premises connected therewith, shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which such weir, dam, fishing weir, fishing mill dam, or artificial obstruction is situated, or otherwise inquire into the propriety of assenting to the prayer of such petition.

After the completion of such inquiry, the Board of Trade may, by provisional order, empower the said board to put in force with reference to the said weir, dam, fishing weir, fishing mill dam, fixed

(h) Second offence penalty must be 2*l.* 10*s.* to 5*l.*; third offence, 5*l.*, and 1*l.* per day: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

engine, or artificial obstruction, and premises referred to in such order, the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, with such conditions and modifications as they may think fit, and the board shall serve a copy of any order so made upon the owner and occupier of the said weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction and premises. No provisional order so made shall be of any validity until the same has been confirmed by Act of Parliament, and the Act confirming such order shall be deemed to be a Public General Act of Parliament, and the said board shall be thereupon deemed and taken to be the promoters of an undertaking to remove the said weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction, in whole or part, so as to enable salmon to pass more freely, and the residue of the premises so purchased, when separated from such weir, dam, fishing weir, fishing mill dam, fixed engine, or artificial obstruction, shall be deemed to be superfluous lands within the meaning of the said Acts, and may be dealt with accordingly: Provided that this section shall not extend to any weir constructed under any Act of Parliament for the purpose of improving the navigation of any river, or of supplying any town with water. For the purposes of this section the word owner shall mean any person or corporation who under the provisions of this clause and the Lands Clauses Consolidation Acts would be enabled to sell and convey any such weir, dam, fishing mill dam, fixed engine, or artificial obstruction.

50. When any proprietor of a fishery or board of conservators is or are, from the circumstances of the case, unable to attach a fish pass to any weir, dam, fishing mill dam, or obstruction under the provisions of the twenty-third section of the Salmon Fishery Act, 1861, such proprietor or board of conservators may, after giving such notice as is prescribed in the last preceding section, present a petition to the Board of Trade praying to be allowed to purchase so much of the bank adjoining the same as may be necessary for such fish pass, and the provisions contained in the last preceding section with reference to the proceedings upon a petition for the purchase of any weir or obstruction for the purpose of removal shall apply to a petition presented under the provisions of this section.

Provision as
to fish passes.
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51. In any case where the special commissioners for English fisheries have decided that any fishing mill dam, box, crib, or cruive is illegal only by reason of its not having a fish pass attached thereto as required by law, if the owner thereof enters into an undertaking to erect and maintain at his own expense a fish pass in accordance with the provisions of the twelfth section of "The Salmon Fishery Act, 1861," before the first day of January one

Provision as
to legal weirs
not now pro-
vided with
fish passes.
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thousand eight hundred and seventy-five, it shall be lawful for such person to use, from and after the erection of such fish pass, the said fishing mill dam, box, crib, or cruive for taking salmon, any provision in "The Salmon Fishery Act, 1865," to the contrary notwithstanding: Provided nevertheless, that in the event of the owner of such fishing mill dam, box, crib, or cruive not making such fish pass within the time above mentioned, his right of fishing or using such fishing mill dam, box, crib, or cruive for the purpose of taking fish shall henceforth cease, and be for ever forfeited and lost, and the board of conservators for the district in which such fishing mill dam, box, crib or cruive is situated shall thereupon give notice to such owner to remove all or any cages, cribs, traps, boxes, cruives, or other contrivances for catching salmon within six calendar months after the service of such notice; and in the event of his non-compliance with such notice, the board aforesaid shall have power to remove the same and all other obstructions to the free passage of the fish.

Board of
Trade may
approve
existing fish
passes.

52. In all cases where any fish pass has been already constructed in any weir, dam, or fishing mill dam, and has received the approval of the Board of Trade, such fish pass shall be deemed to be a fish pass within the meaning of "The Salmon Fishery Acts, 1861 to 1873," notwithstanding such fish pass was not constructed in the manner and by the parties specified in "The Salmon Fisheries Acts, 1861 to 1873." And it shall be lawful for the Board of Trade to approve and certify any fish pass that now is or hereafter shall be constructed, if they are of opinion that such fish pass is efficient in all respects and for all purposes, as if the same had been constructed under the provisions of "The Salmon Fishery Act, 1861," with the written consent and approbation of the Board of Trade.

Amendment
of sections 23,
24, and 26 of
"The Salmon
Fishery Act,
1861."

218

53. The following sections of "The Salmon Fishery Act, 1861," shall be respectively amended in the following manner; (that is to say,)

The twenty-third and twenty-fourth sections thereof shall be read as if the words "or a board of conservators" were inserted after the words "proprietor of a fishery" or "proprietor" throughout such sections respectively:

The twenty-sixth section thereof shall be construed as if the words "where a fish pass is attached to any dam in pursuance of this Act" were omitted, and the words "any dam" were substituted for the words "the dam," and the words "on Sundays and" were inserted after the words "kept shut," and the words "if any or over the dam" were inserted after the words "fish pass."

Compensation
to be paid on
erecting fish

54. In all cases in which it is alleged that a board of conservators, in executing the powers and authorities of the Salmon Fishery Acts,

1861 to 1873, have caused any damage to or injuriously affected any land or other hereditaments by reason of the making or maintaining of any fish pass, grating, or other work, if the compensation claimed in respect of such alleged damage shall not exceed the sum of fifty pounds, the same shall be settled by two justices of the peace, but if the compensation shall exceed the sum of fifty pounds the same shall be settled by arbitration in accordance with the provisions (*i*) of the Common Law Procedure Act, 1854: Provided always, that no compensation shall be recovered under this section unless proceedings for the recovery of the same are instituted within two years from the date of the erection of such fish pass, grating, or other work.

passes or
gratings.
219

55(k). Each of the dams or weirs constructed by the Severn Commissioners under the provisions of "The Severn Navigation Acts, 1842 and 1853," respectively, or either of them, shall be deemed a dam or weir within the meaning of "The Salmon Fishery Acts, 1861 to 1873," and the provisions of the said Acts shall apply thereto, and that every fish pass now existing in the said dams or weirs or either of them, or which may be constructed therein under the provisions of this Act, shall be deemed a fish pass within the meaning of "The Salmon Fishery Acts, 1861 to 1873," and shall be maintained in an efficient state by the said Severn Commissioners.

Provision as
to Severn
navigation
weirs.

56. Any inspector, or any person or persons duly appointed in writing by a board of conservators, may at all times enter upon any lands to inspect any weir, dam, fishing weir, fishing mill dam, fixed engine, obstruction, mill race, or watercourse, and any person either refusing to admit or obstructing them or any of them in entering any such place or places shall for every such offence be liable to a penalty (*l*) of not exceeding five pounds.

Power to enter
and inspect
weirs, dams,
&c.

57. In addition to the license duties authorised to be levied in a fishery district, the board of conservators may from time to time, with the sanction of the Board of Trade, for the purpose of defraying the charges of any improvements made or about to be made for the purpose of facilitating the passage of salmon, levy additional license duties throughout the district, not exceeding in any one year twenty-five per cent. of the sum paid by each person respectively, and the said additional duty shall be payable at the same time as and in addition to the ordinary license duty, and shall for all the purposes of the Salmon Fishery Acts be deemed part of the ordinary license duty, and no license granted after the passing of this Act

Board may
levy addi-
tional duty
for permanent
improve-
ments.

207, 223

(i) These provisions were repealed by 52 & 53 Vict. c. 49, s. 26; see now that Act.

(k) Partly repealed by Stat. Law Rev. Act, 1883; see Stat. Law Rev. Act, No. 2, 1893.

(l) Second offence penalty must be 2*l.* 10*s.* to 5*l.*, and third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

without payment of such additional duty, if any, as well as the license duty applicable thereto, shall be valid: Provided, that notice shall be given by the board, by advertisement in one or more local newspapers, one calendar month before the commencement of each fishing season, of the amount of such additional duty to be paid in addition to the ordinary license duties in force in each district. And the estimate on which such additional duty is founded shall be kept by the clerk or other officer of the board, and be open to the inspection of all previous license payers, riparian owners, and persons entitled to vote within the district, at reasonable times and places to be appointed by the board before the commencement of each fishing season.

PART IX.

GRATINGS TO PREVENT FISH ENTERING WATERCOURSES.

Gratings
in water-
courses.

207, 219

58. Any board of conservators after due notice to the owner or occupier of any mill or other premises, at the expense of such board during such period as may be prescribed in each year, may order to be placed in any watercourse, mill race, cut, leat, or other channel for conveying water for any purpose from any river frequented by salmon at or near the point of divergence from and return to such river, or either of them, or any other suitable place, a grating of such form and dimensions as they shall determine: Provided always, that nothing herein contained shall affect the liability of any person to place and maintain a grating or gratings across any artificial channel under the provisions of the thirteenth section of the Salmon Fishery Act, 1861, nor shall authorise any grating to be placed so as to obstruct any channel used for navigation or in any way to interfere with the effective working of any mill.

Power to
widen
channels.

219

59. In all cases of construction of gratings under the powers of this Act, the Board of Trade may, in such cases as the Board shall deem expedient, cause any watercourse, mill race, cut, leat, or other channel to be widened at the expense of such board, so far as necessary to compensate for the diminution of any flow of water caused by the erection of any grating, or shall take some other means to prevent the flow of water being prejudicially diminished or otherwise injured.

Board may
place gratings
at mouths of
streams.

207, 220

60. A board of conservators, with the consent of the Board of Trade, may adopt such means as the Board shall approve for preventing the ingress of salmon into streams in which they or their spawning beds are, from the nature of the channel, liable to be destroyed, but so that no water rights used or enjoyed for the purposes of manufacture, or agricultural purposes, or drainage or navigation, shall be prejudicially interfered with thereby.

61. The owner or occupier of the lands adjoining any grating erected under the authority of this Act, and the owner or occupier of the lands to which such watercourse, mill race, cut, leat, or other channel leads, shall take all reasonable means to preserve the said gratings from injury, and to prevent the same from being removed, and in case any owner, occupier, or other person shall injure such gratings, or remove any part of them, during the period prescribed for any such grating to be kept up by any byelaw made under the authority of this Act, or open them improperly, or knowingly permit them to be injured or removed or improperly opened, he shall for every such injury, removal, or improper opening, forfeit and pay any sum not exceeding five pounds (*n*).

Owner to
preserve
gratings.
219

PART X.

LEGAL PROCEDURE.

62. All penalties imposed by "The Salmon Fishery Acts, 1861 to 1873," or by any byelaw made in pursuance of this Act, and all sums of money, costs, and expenses by the said Acts or either of them directed to be recovered in a summary manner, may be recovered within six months (*n*) after the commission of the offence before two justices, in manner directed by an Act passed in the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales, with respect to summary conviction and orders," or of any Act amending the same. And all moneys received and penalties recovered under the said Acts or any of them on the complaint of a board of conservators, or of any officer of or a person authorised by a board of conservators (*o*) shall be paid to the board of conservators for the district, to be applied by them for the purposes of "The Salmon Fishery Acts, 1861 to 1873" (unless the Court for some special reason otherwise order).

Recovery of
penalties.

63. The clerk, secretary, or other officer where there is no clerk, of every board of conservators shall prepare and forward to the Board of Trade, before such date as the Board of Trade shall from time to time appoint, an annual return in such form and made up

Returns.

(*n*) For a second offence he will forfeit 2*l.* 10*s.* to 5*l.*, and for third offence, 5*l.*: Salmon Fishery Act, 1865, s. 57; Salmon Fishery Act, 1873, s. 18 (5).

(*n*) Where an information for a penalty for an offence under the Salmon Fisheries Acts was laid, and a summons issued and served within six months from the commission of the offence, it was held that, although the matter did not come for hearing before the justices until after the period of six months had expired, that the limitation of time provided by 11 & 12 Vict. c. 43, s. 11, applied, and that the justices could convict: *Morris v. Duncan*, [1899] 1 Q. B. 4.

(*o*) See the Fisheries Act, 1891, s. 13, as to powers of persons other than conservators to take proceedings. As to place where proceedings can be instituted, see Salmon and Freshwater Fisheries Act, 1892, s. 4.

to such date as the Board of Trade shall from time to time appoint. Such return shall contain such information as the said Board of Trade shall from time to time require; and any such person refusing or neglecting to make such return shall be liable to a penalty of not exceeding one pound for every such refusal or neglect.

Proof of
legality of
scale of
licenses.

223

64. The provisions of the "Documentary Evidence Act, 1868," shall apply to a scale of licenses approved by the Board of Trade, in pursuance of the said "Salmon Fishery Act, 1865," or this Act, in the same manner as if such scale so approved as aforesaid were an order or regulation issued by such Board of Trade, and the production of a copy of such scale of licenses, purporting to be certified to be a correct copy of such scale, by any person empowered to certify the same in pursuance of the "Documentary Evidence Act," shall be evidence that such scale has been approved of, and that all the steps required by "The Salmon Fishery Act, 1865," or this Act, relating to the formation and approval of such scale have been taken.

Repeal of
Acts.

65. The eighteenth, nineteenth, and thirty-fifth sections of the Salmon Fishery Act, 1861, and the fourteenth, twentieth, twenty-fourth, twenty-sixth, and thirtieth sections, the first and second sub-sections of the thirty-fourth section, and the first schedule of the Salmon Fishery Act, 1865, are hereby repealed, except so far as relates to anything done or in the course of being completed under the same respectively (*p*).

SCHEDULES.

FIRST SCHEDULE.

Form of Nomination Paper.

Fishery District.

I the undersigned of do hereby nominate [*A.B.* of in the county of Esquire, *C.D.* of in the county of fisherman] for election as additional members of the board of conservators of the Fishery District under the provisions of "The Salmon Fishery Act, 1873."

(Signed)

To

Returning officer for such election.

Dated this day of 187 .

SECOND SCHEDULE.

Form of Voting Paper.

Fishery District.

| Number of Voting Paper. | Name and Address of Voter. | Number of Votes. |
|-------------------------|----------------------------|------------------|
|-------------------------|----------------------------|------------------|

(*p*) This section is repealed by Stat. Law Rev. Act, 1883.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and insert the number of votes he intends to give to each candidate voted for, and must sign this paper in the presence of, and it must be attested by, a witness.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote, and the number of votes given to each such person.

| Initials of Witness. | Initials of the Voter against the Names of the Persons for whom he intends to vote. | Names of the Persons nominated. | Residence of the Persons nominated. | Quality or calling of the Persons nominated. | Number of Votes given to each Candidate voted for. |
|----------------------|---|---------------------------------|-------------------------------------|--|--|
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| | | | | | |

I vote for the persons in the above list against whose name my initials are placed in the proportion above mentioned.

(Signed)

Mark of

Dated the day of 187 .
Name and address of witness.

THIRD SCHEDULE.

License Duties.

| For each and every— | £ | s. | d. |
|--|----|----|----|
| „ Weir, hang, baulk, garth, goryd, box, crib, or cruive | 12 | 0 | 0 |
| „ Draft or hang net, not exceeding 200 yards in length measured along the head-rope when wet | 5 | 0 | 0 |
| „ Ditto, exceeding 200 yards, for every additional 40 yards or part thereof | 1 | 0 | 0 |
| „ Coracle net | 2 | 5 | 0 |
| „ Putt | 0 | 3 | 6 |
| „ Outrigger or leader to putts and putchers, not exceeding 100 yards in length | 2 | 0 | 0 |
| „ Ditto, exceeding 100 yards, for every additional 20 yards or part thereof | 1 | 0 | 0 |
| „ Cross line | 2 | 10 | 0 |
| „ Single rod and line | 1 | 10 | 0 |
| For putchers or butts, if not exceeding 50 in number .. | 1 | 10 | 6 |
| For every additional 50 or part thereof | 1 | 10 | 6 |

For any instrument or device not named above, such sum as may be determined by the board of conservators, with the sanction of the Board of Trade.

38 VICT. c. 15.

An Act to amend the Sea Fisheries Act, 1868. [28th May, 1875.]

Oyster fishery companies under control of inspectors of fisheries to be subject to Board of Trade.

1. Any oyster fishery company which by any local and personal Act passed since the year 1863 is in any manner made subject to the control of the Inspectors of Fisheries for the time being under "The Salmon Fishery Act, 1861," shall from and after the passing of this Act be deemed to have obtained an order under Part III. of the Sea Fisheries Act, 1868, and shall in all respects be subject to and under the control of the Board of Trade, and shall, as regards such control, be in the same position as if such company had been original grantees under an order made by the Board of Trade under the said Act, and duly confirmed by Parliament (*pp*).

Any provision contained in any such local and personal Act which is at variance with any provision of the Sea Fisheries Act, 1868, relating to the control or powers of the Board of Trade, is hereby repealed.

Powers of Board of Trade in making inquiries.

2. In making the inquiries and examination mentioned in the forty-fifth section of the Sea Fisheries Act, 1868, the Board of Trade, and any inspector appointed by them, shall have and may exercise the same powers as are by the thirty-second section of the same Act conferred on an inspector appointed by the said Board in pursuance of that section.

3. *Saving*.—[Provisionally repealed by the Sea Fisheries Act, 1883, s. 30.]

Short title.

4. This Act may be cited as "The Sea Fisheries Act, 1875."

39 & 40 VICT. c. 19.

An Act to amend the Law relating to Salmon Fisheries in England and Wales. [27th June, 1876.]

[*Preamble*.—Repealed by Stat. Law Rev. Act, 1894.]

Short title.

1. This Act may be cited for all purposes as "The Salmon Fishery Act, 1876," and *this Act and the Salmon Fishery Acts, 1861, 1865, and 1873, may be cited together as "The Salmon Fishery Acts, 1861 to 1876."*

[Words in italics repealed by Stat. Law Rev. Act, 1894.]

Construction of Act.

2. This Act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Acts, 1861, 1865, and 1873.

Commencement of Act.

3. *This Act shall not come into operation until the first day of September one thousand eight hundred and seventy-six, which date is hereinafter referred to as the commencement of this Act.*

[Repealed by Stat. Law Rev. Act, 1894.]

4(*g*). Subject to the provisions contained in sections thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, and forty-five of the Salmon Fishery Act, 1873, for the making, confirming, publishing, and proving of byelaws, a board of conservators may make a byelaw and alter the same from time to time for the following purpose, that is to say,

Board of conservators may make byelaws as to time for killing trout.
207, 221

To alter the period during which it shall be illegal to take or kill trout within any fishery district, or in any portion of a fishery district, so that the period within which trout may not be taken or killed shall not commence earlier than the second day of September nor later than the second day of November in each year, and shall not be less than one hundred and twenty-three days ;

and the said board may by any such byelaw impose a penalty not exceeding five pounds for each offence against such byelaw, and such penalties shall be recovered and applied in manner provided in and by the Salmon Fishery Act, 1873 (*r*).

40 & 41 VICT. C. 42.

An Act to amend the Law relating to the Fisheries of Oysters, Crabs, and Lobsters, and other Sea Fisheries. [10th August, 1877.]

Preliminary.

1. This Act may be cited as The Fisheries (Oyster, Crab, and Lobster) Act, 1877. Short title.

2. *Commencement of Act.*—[Repealed by Stat. Law Rev. Act, 1894.]

PART I.

OYSTERS.

3. This part of this Act shall not apply to Ireland or to any oyster bed or bank within the jurisdiction of the inspectors of Irish Fisheries. This part of Act not to apply to Ireland.

4. A person shall not sell, expose for sale, consign for sale, or buy for sale,—

200

(1.) Any oysters known at the passing of this Act in the oyster trade as “deep-sea oysters,” between the fifteenth day of June in any year and the following fourth day of August ;

Prohibition on sale of oysters between certain dates.
186, 201

or

(2.) Any description of oysters other than those aforesaid, between the fourteenth day of May in any year and the following fourth day of August.

g In this section trout includes char; see Freshwater Fisheries Act, 1878, s. 10, and section is printed as amended by Stat. Law Rev. Act, 1894.

(*r*) See sect. 64 of that Act.

Every person who acts in contravention of this section shall be liable to a fine not exceeding two pounds for the first offence, and ten pounds for the second or any subsequent offence, and also to forfeit all oysters exposed for sale, consigned for sale, or bought for sale in contravention of this section :

Provided that a person shall not be guilty of an offence under this section if he satisfies the Court that the oysters alleged to have been sold, exposed for sale, consigned for sale, or bought for sale,—

- (1.) Were taken within the waters of some foreign state ; or
- (2.) Were preserved in tins or otherwise cured ; or
- (3.) Were intended for the purpose of oyster cultivation within the same district in which the oysters were taken, or were taken from any place for cultivation with the sanction of the Board of Trade ; and for this purpose the Thames estuary, bounded by a line drawn from Orford Ness to the North Foreland, shall be deemed to be a district, and also any other area for the time being constituted a district for the purposes of this section by an order of the Board of Trade, and also where the place at which the oysters are taken is not within any such district as aforesaid, so much of the area within ten miles of the said place where the oysters are taken as is not included in any other such district as aforesaid, and the Board of Trade may from time to time make, and when made revoke and vary, an order for the purposes of this section (s).

Power to
Board of
Trade on local
application to
temporarily
prohibit or
restrict
dredging for
oysters on
certain banks.

185

5. The Board of Trade, on such application as is in this part of this Act mentioned, and after such public inquiry and notice as they think expedient, may, if they think fit, by order restrict or prohibit during a limited period not exceeding one year, either entirely or subject to any exceptions and regulations, the dredging for and taking of oysters on any oyster bank or bed, and may by such order provide for enforcing the order, and any prohibition, restriction, or regulation contained therein, by fines not exceeding twenty pounds for each offence.

The Board of Trade by order may from time to time renew, for a period not exceeding one year, or vary, an order under this section, and may at any time revoke the same.

Nothing in such order shall apply to a several right of fishery in any oyster bed or bank, or to any bed or bank of oysters which has been or shall hereafter be the subject of a grant or regulation order under Part III. of "The Sea Fisheries Act, 1868," or any Acts amending the same.

31 & 32 Vict.
c. 45.

(s) The sale during the close season of oysters taken in foreign waters and relaid and stored until wanted for sale, in English waters where they do not breed, is not prohibited by this section : *Robertson v. Johnson*, [1893] 1 Q. B. 129. A local fisheries committee has power to create a district of oyster cultivation ; see Sea Fisheries Regulation Act, 1888, s. 2, sub-s. (b).

6. An application to the Board of Trade for an order under this part of this Act may be made by any persons appearing to the Board of Trade to represent the fishermen of any locality, or by any of the following authorities, if they appear to the Board of Trade to be locally interested in the fisheries, namely,

Persons entitled to apply to Board of Trade under this part of Act.

- (1.) The justices of a county in general or quarter sessions assembled ;
- (2.) A town council or other urban sanitary authority ;
- (3.) A rural sanitary authority ; and
- (4.) Any body corporate, persons or person being or claiming to be proprietors or proprietor of or intrusted with the duty of improving, managing, maintaining, or regulating any harbour.

7. Where an order of the Board of Trade, under Part III. of the Sea Fisheries Act, 1868, either is limited to the grant of a right of fishery for a period not exceeding twenty-one years over an area not exceeding five acres, or amends a previous order without extending the area to which that order applies, and a petition against the order by any local authority or persons affected thereby is not within one month after the first publication of the order received by the Board of Trade, or if received is withdrawn, the Board of Trade may, if they think fit, submit the scheme for confirmation to Her Majesty in Council, and every such order, if confirmed by Her Majesty in Council, shall have full operation as if it had been confirmed by Parliament as provided by the Sea Fisheries Act, 1868 :

Order relating to oyster fishery under 31 & 32 Viet. c. 45, when unobjected to to take effect on confirmation by Order in Council.

200

Provided that Her Majesty in Council may at any time, on the representation of the Board of Trade, cancel the order, and the grantees under the order shall not be entitled to any compensation in respect of such cancellation, or of any expenses they may have incurred in acting or with a view to act under the order.

PART II.

CRABS AND LOBSTERS.

8. A person shall not take, have in his possession, sell, expose for sale, consign for sale, or buy for sale,—

Prohibition on sale of edible crabs under a certain size.

- (1.) Any edible crab which measures less than four inches and a quarter across the broadest part of the back ; or
- (2.) Any edible crab carrying any spawn attached to the tail or other exterior part of the crab, whether known as “berried crab,” “seed crab,” “spawn crab,” or “ran crab” or by any other name ; or
- (3.) Any edible crab which has recently cast its shell whether known as “caster,” “white crab,” “white-footed crab” “white-livered crab,” “soft crab,” “glass crab,” or by any other name.

201

Every person who acts in contravention of this section shall be liable to a fine not exceeding two pounds for the first offence, and ten pounds for the second and every subsequent offence, and to forfeit all edible crabs exposed for sale, consigned for sale, or bought for sale in contravention of this section :

187

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Provided that a person shall not be guilty of an offence under this section if he satisfies the Court that the edible crabs found in his possession or alleged to have been sold, exposed for sale, consigned for sale, or bought for sale, were intended for bait for fishing (*t*).

Prohibition
on sale of
lobsters under
a certain size.

201

9. A person shall not take, have in his possession, sell, expose for sale, consign for sale, or buy for sale any lobster which measures less than eight inches from the tip of the beak to the end of the tail when spread as far as possible flat.

Every person who acts in contravention of this section shall be liable to a fine not exceeding two pounds for the first offence, and ten pounds for the second and every subsequent offence, and to forfeit all lobsters found in his possession, sold, exposed for sale, consigned for sale, or bought for sale in contravention of this section.

Power on local
application to
prohibit or
restrict the
taking of
crabs and
lobsters in
certain areas.

185, 187,
201

10. The Board of Trade, after such public inquiry and notice as they think expedient, may, if they think fit, from time to time, by order restrict or prohibit, either entirely or subject to any exceptions and regulations, the fishing for and taking of edible crabs and lobsters, or either of them, or any description of them or either of them, within the area named in the order, during such period of years or during such period either in every year or in such number of years, as may be limited by the order, and may by the order provide for enforcing the order, and any prohibition, restriction, or regulation contained therein, by fines not exceeding twenty pounds for each offence.

The Board of Trade by order may from time to time vary, and at any time revoke, an order under this section.

Nothing in such order shall apply to a several right of fishery.

The powers of the Board of Trade under this section shall, as regards any area within the jurisdiction of the Inspectors of Irish Fisheries, be vested in and exercised by those inspectors with the approval of the Lord Lieutenant or other chief governor or governors of Ireland.

PART III.

SUPPLEMENTAL.

Prosecution
of offences
and recovery
of fines.

11. All offences against this Act, or against any order made in pursuance of this Act, may be prosecuted, and all fines under this

(*t*) The Board of Trade may order that the proviso to this section shall not apply within the area named in any order relating to oyster fisheries ; see 47 & 48 Vict. c. 26, s. 1, which Act is now repealed by the Sea Fisheries Regulation Act, 1888, s. 16 ; see also s. 2 of that Act.

Act or any such order may be recovered on summary conviction before a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

For all purposes of and incidental to the prosecution of any such offence, or the recovery of any such fine, and the proceedings and matters preliminary and incidental thereto, and consequential thereon, and for all purposes of and incidental to the jurisdiction of any Court or of any constable or officer with reference to such offence, the offence shall be deemed to have been committed either in the place in which it was actually committed, or in any place in which the offender may for the time being be found.

All fines recovered under this Act in any of the Channel Islands shall be paid to the receiver-general of the island in which they are recovered.

12. All oysters, crabs, and lobsters of which the possession, exposure for sale, consignment for sale, or purchase for sale is prohibited by this Act, may be searched for, seized, condemned, destroyed, and disposed of by any authority lawfully acting under any Act, charter, or byelaw, or by any persons appointed by that authority, or in Ireland by the Inspectors of Irish Fisheries, with the approval of the Lord Lieutenant, in like manner as if such oysters, crabs, and lobsters respectively were found to be diseased, unsound, unwholesome, corrupt, unfit to be sold, or unfit for the food of man.

Search for and seizure of oysters, crabs, and lobsters illegally exposed for sale.

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13. In this Act—

Definitions.

The expression "Summary Jurisdiction Acts" means,—

(1.), (2.), (3.). [Repealed by Stat. Law Rev. Act, 1894.]

(4.) As regards the Isle of Man and the Channel Islands, the law relating to offences and fines, and proceedings therefor.

The expression "Court of Summary Jurisdiction" means,—

(a.) As regards England and Ireland, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Acts; provided that the Court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some Court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice; and

(b.) As regards Scotland, the Sheriff or his substitute; and

(c.) As regards the Isle of Man and the Channel Islands, any Court, governor, deputy governor, deemster, jurat, or other magistrate before whom offences and fines are by law prosecuted and recovered.

32 & 33 Vict.
c. 92.

200

Application
of Act to
Isle of Man
and Channel
Islands.

Repeal of
39 & 40 Vict.
c. cli.

The expression "Inspectors of Irish Fisheries" means the Inspectors of Fisheries acting in execution of the Fisheries (Ireland) Act, 1869.

The expression "person" includes a body corporate.

14. This Act shall apply to the Isle of Man and the Channel Islands, and the royal Courts of the Channel Islands are hereby respectively authorised and required to register this Act.

15. *Temporary Revival of 6 & 7 Vict. c. 79.*—[Repealed by the Sea Fisheries Act, 1883, s. 30.]

16. *The Crab and Lobster Fisheries (Norfolk) Act, 1876, is hereby repealed, without prejudice to anything done or suffered in pursuance of that Act.*—[Repealed by Stat. Law Rev. Act, 1883.]

40 & 41 VICT. c. 65.

[This Act applies to any water, whether public or private, within the limits of the Freshwater Fisheries Act, 1878; see 41 & 42 Vict. c. 39, s. 12. *post.*]

An Act to prohibit the use of Dynamite or other Explosives for the Purpose of catching or destroying Fish in Public Fisheries.

[14th August, 1877.]

Short title.

1. This Act may be cited as the Fisheries (Dynamite) Act, 1877.

Prohibition
of the use of
dynamite in
public
fisheries.

192, 211

2. Any person who uses dynamite or other explosive substance to catch or destroy fish in a public (*u*) fishery shall be liable on summary conviction either to a fine not exceeding twenty pounds, or, in the discretion of the Court, to be imprisoned, with or without hard labour, for a term not exceeding two months.

Offences
committed
on sea coast,
where to be
tried.

3. Any offence committed under this Act, on the sea coast or at sea, within one marine league of the coast, shall be deemed to be committed in a public fishery, and if beyond the ordinary jurisdiction of any Court of summary jurisdiction, shall be deemed either to have been committed on the land abutting on such sea coast or adjoining such sea, or to have been committed in any place where the offender is found, and may be tried and punished accordingly.

Definition of
"summary
conviction."
27 & 28 Vict.
c. 53.
14 & 15 Vict.
c. 93.

4. "Summary conviction" in this Act means, as to England, "a conviction before two justices in petty sessions;" as to Scotland, a conviction under "The Summary Procedure (Scotland) Act, 1864;" as to Ireland, a conviction under "The Petty Sessions (Ireland) Act, 1851," or any Acts in force for the like purpose in the police district of Dublin Metropolis, or any Acts amending such Acts.

41 & 42 VICT. c. 39.

An Act for the Protection of Freshwater Fish. [8th August, 1878.]

Short title.

1. This Act may be cited as the Freshwater Fisheries Act, 1878.

(*u*) This Act also applies to a private fishery; see Freshwater Fisheries Act, 1878, s. 12.

2. This Act shall, so far as is consistent with the tenour thereof, be read as one with the Salmon Fishery Acts, 1861 to 1876. Construction.
24 & 25 Vict.
c. 109.

3. This Act shall not extend to Scotland or Ireland (*c.*). 28 & 29 Vict.
c. 121.

4. *Commencement of Act.*—[Repealed by Stat. Law Rev. Act, 1894.] 39 & 40 Vict.
c. 19.

5. Sections eight and nine of the Salmon Fishery Act, 1861 (which relate to fishing with lights, spears, and other prohibited instruments, and to using roe as a bait), and section sixty-four of the Salmon Fishery Act, 1865 (which provides a close time for trout and char), shall, as amended by the subsequent Salmon Fishery Acts, apply to trout and char in all waters within the limits of this Act; and the term "salmon river," as used in section sixty-four of the Salmon Fishery Act, 1865, shall include any such water. Extent of Act.
Extension of provisions of
24 & 25 Vict.
c. 109, ss. 8,
9, and 28 & 29
Vict. c. 121,
s. 64, to trout
and char.

213, 221

6 (*y*). The provisions of the Salmon Fishery Acts, 1865 and 1873, which relate to the formation, alteration, combination, and dissolution of fishery districts, and to the appointment, qualification, proceedings, and powers of conservators, shall extend and apply to all waters within the limits of this Act frequented by trout or char; and the term "salmon river" in the fourth and nineteenth sections of the Salmon Fishery Act, 1865, and in the twenty-sixth section of the Salmon Fishery Act, 1873, shall mean any river frequented by salmon, trout, or char. Formation and dissolution
of fishery
districts in
trout and
char rivers.
28 & 29 Vict.
c. 121.
36 & 37 Vict.
c. 71.

205, 208

7. In any fishery district subject to a board of conservators, the conservators shall have power to issue licences for the day, week, season, or any part thereof, to all persons fishing for trout or char, and, in the event of the power being exercised in any fishery district, the provision of the thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, and thirty-seventh sections of the Salmon Fishery Act, 1865, and of the twenty-first, twenty-second, twenty-fourth, and twenty-fifth sections of the Salmon Fishery Act, 1873, (relative to licences,) shall, with respect to such district, be construed as if the words "trout or char" were inserted throughout after the word "salmon."

Provisions as
to licences.

208, 223

Provided as follows :

(1.) A licence to fish for salmon shall have effect as a licence to fish for trout and char :

(2.) The fee payable for a licence to fish for trout or char exclusively of salmon in any district shall not exceed one third of the maximum amount chargeable for fishing for salmon under the provisions of the 21st section of the Salmon Fishery Act, 1873.

28 & 29 Vict.
c. 121.

36 & 37 Vict.
c. 71.

36 & 37 Vict.
c. 71.

8. *Powers of Water Bailiffs.*—[Repealed by 47 & 48 Vict. c. 11, s. 3.]

(*c.*) Printed as amended by Freshwater Fisheries Act, 1884.

(*y*) These are to be new boards of conservators; see sect. 11 (*7*), *post*.

Justice may
grant warrant
to enter sus-
pected places.
24 & 25 Vict.
c. 109.

9. The provisions of the thirty-fourth section of the Salmon Fishery Act, 1861, which empower any justice of the peace upon information on oath to authorise the search of any premises, shall extend to all offences committed or alleged to have been committed under this Act, and that section shall be construed and have effect as if the word "salmon" included trout, char, and all freshwater fish.

Power to
extend close
season to char.
39 & 40 Vict.
c. 19.

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10. The provisions of the Salmon Fishery Act, 1876, which empower a board of conservators to alter the period during which it shall be illegal to take or kill trout in any fishery district, shall extend to char, and the fourth section of that Act shall be construed and have effect as if the words "or char" followed the word "trout" in that section.

Close season
for fresh-
water fish.

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11.—(1.) In this section the term "freshwater fish" (z) includes all kinds of fish (other than pollan, trout, and char), which live in fresh water, except those kinds which migrate to or from the open sea :

(2.) The period between the fifteenth day of March and the fifteenth day of June, both inclusive, shall be a close season for freshwater fish :

(3.) If any person during this close season fishes for, catches (a), or attempts to catch or kill any freshwater fish (z) in any river, lake, tributary, stream, or other water connected or communicating with such river, he shall, on summary conviction before two justices, be liable to a fine not exceeding forty shillings :

Nothing in this sub-section shall apply—

(a.) To the owner (b) of any several or private fishery where trout, char, or grayling are specially preserved destroying within such fishery any freshwater fish other than grayling ;

(b.) To any person angling in any several fishery with the leave of the owner of such fishery or in any public fishery under the jurisdiction of a board of conservators with the leave of said board ;

(c.) To any person taking *in any several fishery with the leave of the owner of such fishery, or in any public fishery, except when such taking in a public fishery is*

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(z) The term "freshwater fish" as used in this section does not include eels, but angling for eels during the close season is not authorised ; see the Freshwater Fisheries Act, 1886, s. 1, *post*.

(a) A person who is found during close time by the side of a river fishing with a rod and line, and on being asked if he had caught anything replied that he had not, nor had he even had a bite, but on being told he must be searched produced fish from his pockets, can be convicted on this evidence of a breach of this section for "catching" fish : *Swanwick v. Varney*, (1882), 45 L. T. 716.

(b) Owner may include occupier ; see *Swanwick v. Varney*, *supra*.

prohibited by a byelaw of any conservators, freshwater fish for scientific purposes ;

(d.) *To any person taking in any several fishery with the leave of the owner of such fishery, or in any public fishery, except when such taking in a public fishery is prohibited by a byelaw of any conservators, freshwater fish for use as bait (e) :*

- (4.) If any person during this close season buys, sells, or exposes for sale, or has in his possession for sale, any freshwater fish (*d*), he shall, on summary conviction before two justices, be liable to a fine not exceeding forty shillings :
- (5.) On a second or any subsequent conviction under this section the person convicted shall be liable to a fine not exceeding five pounds :
- (6.) After every conviction under this section the person or persons convicted shall forfeit all fish so caught, bought, sold, exposed for sale, or in possession for sale, and shall be liable, at the discretion of the convicting justices, to the forfeiture of all instruments used in the taking of such fish :
- (7.) A board of conservators appointed under the Salmon Fishery Acts, 1861 to 1876, or under this Act, may, as regards any or all kinds of freshwater fish, with the approval of the Board of Trade, exempt the whole or any part of their district from the operation of the first, second, and third sub-sections of this section. The exemption shall be advertised in such manner as the Board of Trade shall direct (*ee*) :
- (8.) The provisions of the Salmon Fishery Acts, 1861 to 1876, as to legal proceedings, offences, and penalties under those Acts, shall apply to legal proceedings, offences, and penalties (*e*) under this section (*f*).

12. The Fisheries (Dynamite) Act, 1877, which prohibits the use of dynamite or other explosive substance for the catching or destruction of fish in a public fishery, shall apply to the use of any such substance for the catching or destruction of fish in any water, whether public or private, within the limits of this Act.

13. *Repeal of part of 18 G. 3, c. 33, as to fishing in the Severn and Vernieu in June and July.*—[Repealed by Stat. Law Rev. Act, 1883.]

(c) Printed as amended by Freshwater Fisheries Act, 1884, s. 5.

(d) This section applies to freshwater fish caught beyond the limits of that part of the United Kingdom to which this Act applies : *Prior v. Bradley*, (1885) 16 Q. B. D. 148.

(e) For second offence the justices need not impose a penalty of more than 2*l.* 10*s.* ; for third offence the full penalty must be imposed ; see Salmon Fishery Act, 1873, s. 18 (5), and Salmon Fishery Act, 1865, s. 57. As to place where proceedings may be instituted, see Salmon and Freshwater Fisheries Act, 1892, s. 4.

(ee) For list of exemptions see annual report of Inspectors of Salmon and Freshwater Fisheries.

(f) Printed as amended by Salmon and Freshwater Fisheries Act, 1886.

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24 & 25 Vict.
c. 109.
28 & 29 Vict.
c. 121.
36 & 37 Vict.
c. 71.
39 & 40 Vict.
c. 19.

221

24 & 25 Vict.
c. 109.
28 & 29 Vict.
c. 121.
36 & 37 Vict.
c. 71.
39 & 40 Vict.
c. 19.

Extension of
40 & 41 Vict.
c. 65 to
private
waters.

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42 & 43 VICT. C. 26.

An Act to amend the Salmon Fishery Act with relation to fixed Engines in Tidal Waters. [21st July, 1879.]

Construction of Act.

1. This Act shall be read as one with the Salmon Fishery Acts, 1861 to 1876.

Alteration of close season as to putts and putchers.

220, 221

2. Notwithstanding anything in the Salmon Fishery Acts, 1861 to 1876, contained, the annual close season for putts and putchers shall commence on the first day of September in each year, and terminate on the first day of May in the ensuing year, both inclusive. None of the provisions of the said Acts as to the weekly close season shall apply to putts or putchers.

Short title.

3. This Act may be cited as the Salmon Fishery Law Amendment Act, 1879.

44 & 45 VICT. C. 12.

The Customs and Inland Revenue Act, 1881.

[3rd June, 1881.]

Time and place for landing goods inwards.

183, 202, 225

9. No goods, except diamonds and bullion, and lobsters and fresh fish of British taking, imported in British ships, which goods may be landed without report or entry, shall be unshipped from any ship arriving from parts beyond the seas, or be landed or put on shore on Sundays or holidays, except by special permission of the Commissioners of Customs; nor shall they be unshipped, landed, or put on shore on any other days except between the hours of eight o'clock in the morning and four o'clock in the afternoon from the first day of March to the thirty-first day of October, both inclusive, and between the hours of nine o'clock in the morning and four o'clock in the afternoon during the remainder of the year, or between such other hours as may be appointed by the Commissioners of Customs, nor shall any goods whatever be unshipped or landed at any time unless in the presence, or with the authority of the proper officer of Customs, nor shall they be so landed except at some legal quay, wharf, or other place duly appointed for the landing or unshipping of goods, nor shall any goods after having been unshipped or put into any boat or craft to be landed, be transhipped or removed into any other boat or craft previously to their being landed, without the permission of the proper officer of Customs, and if any goods shall be unshipped or removed from any importing ship for the purpose of being landed they shall be forthwith taken to and landed at the wharf, quay, or other place at which the same are intended to be landed. If any goods shall be unshipped, landed, transhipped, removed, or dealt with contrary to the provisions of this section they shall be forfeited together with the barge, lighter, boat, or other vessel employed in removing the same.

Specifications for free goods

11. The exporter of goods for which no bond is required shall (except as hereinafter provided) within six days after the final clearance

outwards of the exporting ship, or within such other period as the Commissioners of Customs may direct, either by himself or his agent, deliver to the proper officer of Customs at the port of shipment a specification in the form No. 8 or No. 9 in schedule B to the Customs Consolidation Act, 1876, according to the nature of the goods, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct, and shall subscribe the declaration at the foot thereof, and on the demand of the proper officer of Customs shall produce the invoice bills of lading and other documents relating to the goods to test the accuracy of such specification; and on failure to comply with any of the foregoing requirements the exporter or agent shall for every such offence forfeit five pounds; and in case any of the particulars contained in any such specification shall be incorrect or inaccurate, the person subscribing the declaration shall forfeit the like penalty.

six days after clearance.

Forms Nos. 8 and 9.

Provided always that no salmon shall be shipped to be exported without previous entry thereof in accordance with the Salmon Fishery Acts for the time being, nor except upon due compliance in all other respects with the provisions of such Acts.

Except as to salmon.

46 & 47 VICT. c. 22.

[So much of this Act as applies to Scottish Sea Fisheries is amended by 48 & 49 Vict. c. 70.]

An Act to carry into effect an International Convention concerning the Fisheries in the North Sea, and to amend the Laws relating to British Sea Fisheries. [2nd August, 1883.]

Preliminary.

1. This Act may be cited as the Sea Fisheries Act, 1883.

Short title.

Confirmation of Convention.

2. The Convention set out in the first schedule to this Act (referred to in this Act as the Convention) is hereby confirmed, and the Articles thereof shall be of the same force as if they were enacted in the body of this Act. •

Confirmation of Convention.

Fishery Regulations.

3. It shall be lawful for Her Majesty from time to time, by Order in Council, to make, alter, and revoke regulations for carrying into execution this Act, and the intent and object thereof, and for the maintenance of good order among sea fishing boats, and the persons belonging thereto, and to impose fines not exceeding ten pounds for the breach of such regulations (*g*).

Power to Her Majesty, by Orders in Council, to make, &c. regulations for execution of Act and maintenance of order.

4. If within the exclusive fishery limits (*h*) of the British Islands any person, or if outside those limits any person belonging to a British sea fishing boat,

Punishment for violation of Articles

(*g*) For regulations, see London Gazette, 1889, p. 2084, and *post*, p. 347.

(*h*) Defined in sect. 28, *post*.

13 to 22 of
Convention,
and for other
offences.

199, 201

- (a.) acts in contravention of Articles thirteen to twenty-two (both inclusive) of the first schedule to this Act, or any of them ; or,
- (b.) causes injury to any person in any one or more of the following ways, namely, by assaulting any one belonging to another sea-fishing boat, or by causing damage to another sea-fishing boat, or to any property on board thereof, or belonging thereto ; or,
- (c.) fishes for oysters, or has on board his boat any oyster dredge within any seas (*i*) and during any time within and during which oyster fishing is prohibited by law, or by any convention, treaty, or arrangement to which this Act may be hereafter applied ;

such person shall be liable, on summary conviction, to a fine not exceeding fifty pounds, or, in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour.

Punishment
for violation
of Article 23 of
Convention.

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5. If within the exclusive fishery limits of the British Islands, any person, or if outside those limits any person belonging to a British sea-fishing boat,

- (a.) Uses any instrument for the purpose of damaging or destroying, by cutting or otherwise, any fishing implement belonging to another sea-fishing boat, except in the cases provided for by Articles twenty and twenty-one of the first schedule to this Act ; or,
- (b.) Takes on board or has on board such boat any instrument serving only or intended to damage or destroy fishing implements, by cutting or otherwise ;

such person shall be liable on summary conviction to a fine not exceeding fifty pounds, or in the discretion of the Court to imprisonment for a term not exceeding three months, with or without hard labour, and the instrument shall be liable to be forfeited.

Regulations
as to lights
for sea-fishing
boats.

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6. The regulations respecting lights for the time being in force under the Acts relating to merchant shipping shall, so far as they relate to sea-fishing boats, be deemed to be provisions of this Act and may be enforced accordingly, and a sea-fishery officer shall for that purpose, in addition to his powers under this Act, have the same powers as are given to any officer by the said Acts relating to merchant shipping (*j*).

(*i*) *Quere* : Does this sub-section apply to a vessel fishing in a part of a sea in which oyster fishing is not prohibited, whilst in another part of the sea such fishing is prohibited ?

(*j*) The rules at present in force are set out in Abbott's "Merchant Shipping," 14th ed., and "The Rules of the Road at Sea," 3rd ed.

Exclusive Fishery Limits.

7. (1.) A foreign sea-fishing boat shall not enter within the exclusive fishery limits of the British Islands (*k*), except for purposes recognised by international law, or by any convention, treaty, or arrangement for the time being in force between Her Majesty and any foreign State, or for any lawful purpose.

Regulations as to foreign sea-fishing boats within exclusive fishery limits.

(2.) If a foreign sea-fishing boat enters the exclusive fishery limits of the British Islands (*l*),

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- (a.) The boat shall return outside of the said limits so soon as the purpose for which it entered has been answered ;
- (b.) No person aboard the boat shall fish or attempt to fish while the boat remains within the said limits ;
- (c.) Such regulations as Her Majesty may from time to time prescribe by Order in Council shall be duly observed (*m*).

(*k*) Defined in sect. 28, *post*.

(*l*) Defined in sect. 28, *post*.

(*m*) Order in Council, 6th April, 1889. London Gazette (1889), 2084 :—

SEA FISHERIES ACT, 1883, sect. 7.

Regulations.

1. No person on board of or belonging to any British sea-fishing boat shall discharge or present any firearm, or discharge or throw any stone, ballast, coal, bottle, missile, or thing at any other sea-fishing boat or boats, or at any person or persons on board of or belonging to any sea-fishing boat or boats, or shall use any threatening, abusive, or obscene language to, or attack, intimidate, or molest any other person or persons on board of or belonging to any sea-fishing boat or boats, or do any act likely to provoke a breach of the peace between himself and any other person or persons on board of or belonging to any sea-fishing boat or boats, or between persons on board of or belonging to any sea-fishing boat or boats, or incite any other person or persons to do any of the aforesaid things.

2. The master or person for the time being in charge of any British sea-fishing boats shall use every endeavour and take all reasonable means in order to secure that the persons on board of or belonging to his boat duly observe the regulation numbered 1, and to prevent them from committing any breach thereof.

3. Every person committing or guilty of any breach of the foregoing regulations shall forfeit and pay for each and every breach thereof the sum of 10*l*.

4. The Court or tribunal before which any person may be found guilty of any such breach as in the third regulation mentioned may mitigate the said fine of 10*l*. to such sum as shall be an adequate penalty for the offence committed.

5. Whenever a foreign sea-fishing boat enters the exclusive fishery limits of the British Islands, no person on board of or belonging to any such boat shall discharge or present any firearm, or discharge or throw any stone, ballast, coal, bottle, missile, or thing at any other vessel or vessels, boat or boats, or at any person or persons on board of or belonging to any vessel or vessels, boat or boats, or shall use any threatening, abusive, or obscene language to, or attack, intimidate, or molest any other person or persons belonging to or on board of any other vessel or vessels, boat or boats, or do any act likely to provoke a breach of the peace between himself and any other person or persons on board of or belonging to any vessel or vessels, boat or boats, or between persons on board of or belonging to any vessel or vessels, boat or boats, or incite any other person or persons to do any of the aforesaid things.

6. These regulations shall apply only to any place or places not being on the land.

7. In this order the words and expressions used shall have the same meaning as they have in the Sea Fisheries Act, 1883.

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(3.) In the event of any contravention of this section on the part of any foreign sea-fishing boat, or of any person belonging thereto, the master or person for the time being in charge of such boat shall be liable on summary conviction to a fine not exceeding, in the case of the first offence, ten pounds, and in the case of a second or any subsequent offence, twenty pounds (*n*).

Registry of British Sea-fishing Boats.

8. *Amendment of 31 & 32 Vict. c. 45, ss. 22—26.*—[Repealed by the Merchant Shipping Act, 1894, s. 745.]

Miscellaneous.

Prohibition of manufacture and sale of instruments for destroying fishing implements.

9. (1.) There shall not be manufactured or sold or exposed for sale at any place within the British Islands, any instrument serving only or intended to damage or destroy fishing implements, by cutting or otherwise.

(2.) In the event of any contravention of this section a person guilty thereof shall be liable, on summary conviction, to a fine not exceeding fifty pounds, or in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour, and the instrument shall be liable to be forfeited.

Provision as to wreck (Article 25 of Convention).

10. The boats and things specified in Article twenty-five of the first schedule to this Act shall be deemed to be "wreck" within the meaning of any Acts relating to merchant shipping, so however that the provisions of the said Article shall be duly observed.

Enforcement of Act.

[The following sections (11—14) are explained by the Fisheries Act, 1891, s. 13, and the Merchant Shipping Act, 1894, s. 373, substitutes a reference to that section, and any Order in Council made thereunder, for the reference to ss. 21—24 of the Sea Fisheries Act, 1868, and to any Order in Council made thereunder.]

Who are to be British and foreign sea-fishery officers.

11. (1.) The provisions of this Act and of any Order in Council under this Act or under the sections of the Sea Fisheries Act, 1868, amended by this Act shall be enforced by sea-fishery officers, either British or foreign (*o*).

(2.) The following persons shall be British sea-fishery officers; that is to say, every officer of or appointed by the Board of Trade, every commissioned officer of any of Her Majesty's ships on full pay, every officer authorised in that behalf by the Admiralty, every British

(*n*) In the event of any contravention of this section by any foreign sea-fishing boat, or of any person belonging thereto, any fish or fishing gear found on board or shown to have been used within the exclusive fishery limits of the British Islands is liable to be forfeited; see the Fisheries Act, 1891, s. 5.

(*o*) Any person may take legal proceedings to enforce this Act; see the Fisheries Act, 1891, ss. 9 and 13, annulling the effect of *R. v. Cubitt*, (1889) 22 Q. B. D. 662.

consular officer, every collector and principal officer of Customs in any place in the British Islands, and every officer of Customs in the British Islands authorised in that behalf by the Commissioners of Customs, every divisional officer of the coast guard, and every principal officer of a coast guard station.

(3.) The following persons shall be foreign sea-fishery officers, that is to say, the commander of any vessel belonging to the Government of any foreign State bound by the Convention, and any officer appointed by a foreign State for the purpose of enforcing the Convention, or otherwise recognised by Her Majesty as a sea-fishery officer of a foreign State.

12. For the purpose of enforcing the provisions of this Act and of any Order in Council under this Act or under the Sea Fisheries Act, 1868, as amended by this Act, a British sea-fishery officer may with respect to any sea-fishing boat within the exclusive limits of the British Islands and with respect to any British sea-fishing boat outside of those limits, exercise the following powers :

Powers of
British sea-
fishery
officers.

- (1.) He may go on board it ;
- (2.) He may require the owner, master, and crew, or any of them, to produce any certificates of registry, licenses, official log-books, official papers, articles of agreement, muster rolls, and other documents relating to the boat or to the crew, or to any member thereof, or to any person on board the boat, which are in their respective possession or control on board the boat, and may take copies thereof or of any part thereof ;
- (3.) He may muster the crew of the boat ;
- (4.) He may require the master to appear and give any explanation concerning his boat and her crew, and any person on board his boat, and the said certificates of registry, licenses, official logbooks, official papers, articles of agreement, muster rolls, and other documents, or any of them ;
- (5.) He may examine all sails, lights, small boats, anchors, grapnels, and fishing implements belonging to the boat ;
- (6.) He may seize any instrument serving only or intended to damage or destroy fishing implements, by cutting or otherwise, which is found on board the boat or in the possession of any person belonging to the boat ;
- (7.) He may make any examination or inquiry which he deems necessary to ascertain whether any contravention of the provisions of this Act, or of any such Order of Council as aforesaid has been committed, or to fix the amount of compensation due for any damage done to another sea-fishing boat, or to any person or property on board thereof or belonging thereto, and may administer an oath for such purpose ; and

- (8.) In the case of any person who appears to him to have committed any such contravention he may, without summons, warrant, or other process, both take the offender and the boat to which he belongs and the crew thereof to the nearest or most convenient port, and bring him or them before a competent Court, and detain him, it, and them in the port until the alleged contravention has been adjudicated upon.

Powers of
British and
foreign sea-
fishery
officers.

13. For the purpose of carrying into effect the Convention, and of exercising and performing the powers and duties thereby vested in and imposed on cruisers and commanders of cruisers, a foreign sea-fishery officer may, with respect to any British sea-fishing boat, and any sea-fishery officer, whether British or foreign, may, with respect to any foreign sea-fishing boat to which this Act for the time being applies, exercise any of the powers conferred by this Act on British sea-fishery officers.

Provided that—

- (a.) Nothing in this section shall authorise a sea-fishery officer to do anything not authorised by the Convention; and
- (b.) The port to which any sea-fishing boat or any person belonging thereto is taken shall, except where the nationality of such boat is not evidenced by official papers, be a port of the State to which such boat belongs.

Protection of
and punish-
ment for
obstructing
sea-fishery
officers.

39 & 40 Vict.
c. 36.

14.—(1.) A sea-fishery officer shall be entitled to the same protection in respect of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under this Act, as is given to any officer of Customs by the Customs Consolidation Act, 1876, or any Act amending the same, and (with reference to the seizure or detention of any ship) by any Act relating to the registry of British ships.

(2.) If any person obstructs any sea-fishery officer in acting under the powers conferred by this Act, or refuses or neglects to comply with any requisition or direction lawfully made or given by, or to answer any question lawfully asked by, any sea-fishery officer in pursuance of this Act, such person shall be liable, on summary conviction, to a fine not exceeding fifty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Legal Proceedings.

Compensation
for damage
caused by
offence.

15 (p).—(1.) Where on the conviction of any person under this Act for an offence it appears to the Court that any injury to person or property has been caused by the offence, the Court may by such conviction adjudge the person convicted to pay in addition to any fine a reasonable sum as compensation for such injury, and such sum

(p) This section is repealed as to Scotland by the Sea Fisheries (Scotland) Amendment Act, 1885, s. 8.

may be recovered as a fine under this Act and when recovered shall be paid to the person injured.

(2.) Any compensation specified in a document signed in accordance with Article thirty-three of the first schedule to this Act or fixed by a sea-fishery officer in accordance with any submission to arbitration may be recovered as a simple contract debt, and in England may also be recovered as a civil debt before a Court of summary jurisdiction.

(3.) In a proceeding against any person for the recovery of such last-mentioned compensation, the formal document referred to in the said Article, or an award of a sea-fishery officer in pursuance of a submission to arbitration signed by the person liable to pay such compensation, shall be sufficient evidence that such person is liable to pay the compensation specified in such document or award.

16.—(1.) Offences under this Act may (save as otherwise provided) be prosecuted, and fines under this Act may be recovered in a summary manner; that is to say,—

Summary
prosecution of
offences and
recovery of
fines.

(a.) In England before a justice or justices, in manner provided by the Summary Jurisdiction (English) Acts;

42 & 43 Vict.
c. 49.

(b.) In Scotland in manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881;

27 & 28 Vict.
c. 53.

(c.) In Ireland within the police district of Dublin metropolis in manner provided by the Acts regulating the powers and duties of the justices of the peace of such district, or of the police of such district, and elsewhere in Ireland in manner provided by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same;

44 & 45 Vict.
c. 33.

(d.) In the Isle of Man, and the Islands of Guernsey, Jersey, Alderney, and Sark respectively, before any Court, governor, deputy governor, deemster, jurat, or other magistrate, in the manner in which the like offences and fines are by law prosecuted and recovered, or as near thereto as circumstances admit.

14 & 15 Vict.
c. 93.

(2.) If any person feels aggrieved by any conviction under this Act by a Court of summary jurisdiction, or by any determination or adjudication of such Court with respect to any compensation under this Act, he may, where imprisonment is awarded without the option of a fine, or the sum adjudged to be paid exceeds five pounds, appeal therefrom as follows:—

(a.) In England the appeal shall be to quarter sessions in manner provided by the Summary Jurisdiction (English) Acts;

(b.) In Ireland the appeal shall be to the Court of quarter sessions in manner directed by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same.

(c.) In Scotland, the Isle of Man, and the Islands of Guernsey, Jersey, Alderney, and Sark, the appeal shall be to the Court

and in the manner in which appeals from the like convictions and determinations and adjudications are made.

Evidence.

17.—(1.) Any document drawn up in pursuance of the first schedule to this Act shall be admissible in any proceeding, civil or criminal, as evidence of the facts or matters therein stated.

(2.) If evidence contained in any such document was taken on oath in the presence of the person charged in such evidence, and such person had an opportunity of cross-examining the person giving such evidence and of making his reply to such evidence, the sea-fishery officer drawing up such document may certify the said facts, or any of them.

(3.) Any document or certificate in this section mentioned purporting to be signed by a sea-fishery officer shall be admissible in evidence without proof of such signature, and, if purporting to be signed by any other person, shall, if certified by a sea-fishery officer to have been so signed, be deemed until the contrary is proved to have been signed by such other person.

(4.) If any person forges the signature of a sea-fishery officer to any such document as above mentioned, or makes use of any such document knowing the signature thereto to be forged, such person shall be liable on summary conviction to imprisonment for a term not exceeding three months with or without hard labour, and on conviction on indictment to be imprisoned with or without hard labour for a term not exceeding two years, and the cost of the prosecution of any such person on indictment may be paid as in cases of felony.

Jurisdiction of Courts.

18. For the purpose of giving jurisdiction to Courts under this Act, a sea-fishing boat shall be deemed to be a ship within the meaning of any Act relating to offences committed on board a ship, and every Court shall have the same jurisdiction over a foreign sea-fishing boat within the exclusive fishery limits of the British Islands, and persons belonging thereto, as such Court would have if such boat were a British sea-fishing boat.

Service to be good if made personally or on board ship.

19. Service of any summons or other matter in any legal proceeding under this Act shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any sea-fishing boat to which he may belong, with the person being or appearing to be in command or charge of such boat.

Masters of boats liable to fines imposed.

20.—(1.) Where any offence against this Act has been committed by some person belonging to a sea-fishing boat, the master or person for the time being in charge of such boat shall in every case be liable to be deemed guilty of such offence; provided that if he proves that he issued proper orders for the observance, and used due diligence to enforce the observance, of this Act, and that the offence

in question was actually committed by some other person without his connivance, and that the actual offender has been convicted, or that he has taken all practical means in his power to prosecute such offender (if alive) to conviction, he shall not be liable to any further punishment than payment of compensation for any injury caused by the offence.

(2.) Any fine or compensation adjudged under this Act may be recovered in the ordinary way, or, if the Court think fit so to order, by distress or pouding and sale of the sea-fishing boat to which the offender belongs, and her tackle, apparel, and furniture and any property on board thereof, or belonging thereto, or any part thereof; provided that, where the boat is a foreign sea-fishing boat, the Court may order that in lieu of any such distress the boat may be detained in some port in the British Islands for a period not exceeding three months from the date of the conviction, and the boat may be detained accordingly, and in such case shall not be distrained.

21.—(1.) The Court adjudging any fine or forfeiture under this Act may, if it think fit, direct the whole or any part thereof to be applied in or towards payment of the expenses of the proceedings; and, subject to such direction, all fines and the proceeds of all forfeitures recovered under this Act shall, notwithstanding anything in any Act relating to municipal corporations or otherwise, be paid into the Exchequer in such manner as the Treasury may direct.

Application of fines.

(2.) Forfeitures may be destroyed, sold, and disposed of as the Court adjudging the forfeiture may direct.

22. (1.) Nothing in this Act shall prevent any person being liable under any other Act or otherwise to any indictment, proceeding, punishment, or penalty, other than is provided for any offence by this Act, so that no person be punished twice for the same offence.

Saving of liability and rights.

(2.) Nothing in this Act, or in any Order in Council made thereunder, nor any proceedings under such Act or order with respect to any matter, shall alter the liability of any person in any action or suit with reference to the same matter, so that no person shall be required to pay compensation twice in respect of the same injury.

Application of Act.

23. If at any time after the commencement of this Act any convention, treaty, or arrangement respecting sea fisheries is made between Her Majesty and any foreign State, it shall be lawful for Her Majesty, by Order in Council, to direct that all or any of the provisions of this Act shall, and the same shall accordingly (subject to the exceptions, restrictions, and conditions, if any, in the order mentioned) apply to the said convention, treaty, or arrangement, and have effect in like manner as if the said convention, treaty, or arrangement were set forth in the first schedule to this Act, and

Extension of Act by Order in Council.

were part of that schedule and were the Convention referred to in this Act.

Application of Act to seas between British Islands and France, and continuance of 6 & 7 Vict. c. 79, as to French Convention.

24. If the provisions of this Act are applied by Order in Council to any convention, treaty, or arrangement made in substitution for the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, or for the Convention and Articles set forth in the schedule to the Act of the sixth and seventh years of the reign of Her present Majesty, chapter seventy-nine, intituled "An Act to carry into effect the Convention between Her Majesty and the King of the French, concerning the fisheries in the seas between the British Islands and France," that last-mentioned Act shall, after the date fixed by the said order for the application of this Act be repealed, but such last-mentioned Act shall, until the said date or any earlier date at which the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, comes into operation, continue in force so far as regards French sea-fishing boats and persons belonging thereto within the seas to which the said Convention and Articles set forth in the schedule thereto apply, so far as those seas are outside the exclusive fishery limits of the British Islands, and are not within the North Sea as defined in the first schedule to this Act.

General application of Act.

25. This Act, so far as it applies to foreign sea-fishing boats outside of the exclusive fishery limits of the British Islands, and persons belonging thereto, and to foreign sea-fishery officers, shall apply only within the North Sea as defined by Article four of the first schedule to this Act, or within the seas specified in any convention, treaty, or arrangement to which this Act may be applied by Order in Council made in pursuance of this Act, and to the boats and officers of a foreign State bound by the Convention in the first schedule to this Act or by any convention, treaty, or arrangement to which this Act may be applied, but save as aforesaid this Act shall apply to the whole of the British Islands as defined by this Act, and to the seas surrounding the same, whether within or without the exclusive fishery limits of the British Islands, and the Royal Courts of Guernsey and Jersey shall register this Act in their respective Courts.

Supplemental.

Publication of Orders in Council.

26. Orders in Council made in pursuance of this Act shall be published in the London Gazette, or otherwise published in such manner as the Board of Trade may direct for such sufficient time before they come into force as to prevent inconvenience.

Amendment of 31 & 32 Vict. c. 45, s. 18.
39 & 40 Vict. c. 36.

27. The reference in section eighteen of the Sea Fisheries Act, 1868, to section two hundred of the Customs Consolidation Act, 1853, shall be construed to refer to section one hundred and seventy of the Customs Consolidation Act, 1876.

28 (g). In this Act,—

Definitions.

The expression “sea-fishing” shall not include fishing for salmon as defined by any Act relating to salmon, but save as aforesaid, means the fishing for every description both of fish, and shell fish, found in the seas to which this Act applies; and the expression “sea-fisherman” and other expressions relating to sea-fishing shall be construed accordingly :

“Sea-fishing :”

The expression “sea-fishing boat” includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea-fishing, or in carrying on the business of a sea-fisherman :

“Sea-fishing boat :”

The expression “fishing implement” means any net, line, float, barrel, buoy, or other instrument, engine, or implement used or intended to be used for the purpose of sea-fishing :

“Fishing implements :”

The expression “British Islands” includes the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney, and Sark, and their dependencies :

“British Islands :”

The expression “exclusive fishery limits of the British Islands” means that portion of the seas surrounding the British Islands within which Her Majesty’s subjects have, by international law, the exclusive right of fishing, and where such portion is defined by the terms of any Convention, treaty or arrangement for the time being in force between Her Majesty and any foreign State, includes, as regards the sea-fishing boats and officers and subjects of that State, the portion so defined :

“Exclusive fishery limits :”

The expression “person” includes a body of persons corporate or unincorporate :

“Person :”

The expression “Court” includes any tribunal or magistrate exercising jurisdiction under this Act.

“Court :”

29 (g). (The Act came into force on the 15th day of May, 1884. See London Gazette, 1884, p. 1,468.)

Commencement of Act.

30. (r) (1.)

(2.) The Acts specified in the second part of the second schedule to this Act shall be repealed to the extent specified in the third column of that schedule :

Repeals.

Provided that, until the date herein-after(s) mentioned at which such repeal takes full effect, the repeal of the enactments specified in the said second part shall, except within the North Sea as defined by the first schedule to this Act, be subject to the following limitations :

g) Printed as amended by Stat. Law Rev. Act, 1898.

r) Printed as amended by Stat. Law Rev. Act, 1898.

(s) *I.e.*, the date on which the Convention set forth in the Sea Fisheries Act, 1868, is put in force by Order in Council.

- (a.) The repeal shall not extend to section twelve of the Sea Fisheries Act, 1868 (which section relates to oyster fishing), nor to the recovery of any penalty for a violation of that section.
- (b.) The repeal shall extend only to officers and boats within the exclusive fishery limits of the British Islands and to British sea-fishing boats when outside the exclusive fishery limits of the British Islands ;
- (c.) The repeal shall not affect the power of French sea-fishery officers and French Courts over British sea-fishing boats when outside the exclusive fishery limits of the British Islands, or the power of British and French sea-fishery officers and British Courts over French sea-fishing boats brought within the exclusive fishery limits of the British Islands for offences committed outside those limits ;
- (d.) The repeal shall not alter the power of receiving as evidence any depositions, minutes, and other documents which by the said Acts are made receivable as evidence ;
- (e.) If the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, comes into operation, then, upon notice thereof being given in the London Gazette, the said enactments shall, subject to the provisions of this section, be in force for the purposes of such Convention.

If this Act is applied by Order in Council to French sea-fishery officers and French sea-fishing boats within the seas to which the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, applies, the said repeal of the enactments specified in the second part of the second schedule to this Act shall take full effect as from the date at which such application of this Act takes effect.

Continuance
of Act.

31. So much of this Act as has effect outside of the exclusive fishery limits of the British Islands shall, if the Convention ceases to be binding on Her Majesty, cease to apply to the boats and officers of any foreign State bound by the Convention, and if the Convention ceases to be binding on any foreign State shall cease to apply to the boats and officers of such State, but subject as aforesaid this Act shall continue in force notwithstanding the determination of the Convention.

SCHEDULES.

FIRST SCHEDULE.

International Convention for the purpose of regulating the Police of the Fisheries in the North Sea outside Territorial Waters.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland; His Majesty the Emperor of Germany, King of Prussia: His

Majesty the King of the Belgians; His Majesty the King of Denmark; the President of the French Republic; and His Majesty the King of the Netherlands, having recognised the necessity of regulating the police of the fisheries in the North Sea, outside territorial waters, have resolved to conclude for this purpose a Convention, and have named their Plenipotentiaries as follows:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable William Stuart, Companion of the Most Honourable Order of the Bath, &c., Her Envoy Extraordinary and Minister Plenipotentiary at the Hague; Charles Malcolm Kennedy, Esq., Companion of the Most Honourable Order of the Bath, &c., Head of the Commercial Department of the Foreign Office; and Charles Cecil Trevor, Esq., Barrister at Law, Assistant Secretary to the Board of Trade, &c.;

His Majesty the Emperor of Germany, King of Prussia, Veit Richard von Schmidthals, Knight of the Order of the Red Eagle of the Third Class, and of the Order of St. John, &c., Councillor of Legation, his Chargé d'Affaires at the Hague; and Peter Christian Kinch Donner, Knight of the Order of the Red Eagle of the Fourth Class with the Sword, and of the Crown of the Fourth Class, &c., his Councillor of State, Captain in the Navy, on the Reserve;

His Majesty the King of the Belgians, the Baron d'Anethan, Commander of the Order of Leopold, &c., his Envoy Extraordinary and Minister Plenipotentiary at the Hague; and M. Léopold Orban, Commander of the Order of Leopold, &c., his Envoy Extraordinary and Minister Plenipotentiary, Director-General of the Political Department in the Ministry of Foreign Affairs;

His Majesty the King of Denmark, Carl Adolph Bruun, Knight of the Order of the Danebrog, &c., Captain in the Navy;

The President of the French Republic, the Count Lefèbvre de Béhaine, Commander of the National Order of the Legion of Honour, &c., Envoy Extraordinary and Minister Plenipotentiary of the French Republic at the Hague; and M. Gustave Émile Maneel, Officer of the National Order of the Legion of Honour, &c., Commissary of Marine;

His Majesty the King of the Netherlands, the Jonkheer Willem Frederik Rochussen, Commander of the Order of the Lion of the Netherlands, &c., his Minister of Foreign Affairs; and Eduard Nicolaas Rahusen, Knight of the Order of the Lion of the Netherlands, &c., President of the Committee for Sea Fisheries;

Who, after having communicated the one to the other their full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.—The provisions of the present Convention, the object of which is to regulate the police of the fisheries in the North Sea outside territorial waters, shall apply to the subjects of the high contracting parties.

ARTICLE II.—The fishermen of each country shall enjoy the exclusive right of fishery within the distance of three miles from low water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed ten miles.

The present Article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Powers to whom the shore belongs.

ARTICLE III.—The miles mentioned in the preceding Article are geographical miles, whereof sixty make a degree of latitude.

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ARTICLE IV.—For the purpose of applying the provisions of the present Convention, the limits of the North Sea shall be fixed as follows:—

1. On the north by the parallel of the 61st degree of latitude;
2. On the east and south:—
 - (1.) By the coasts of Norway between the parallel of the 61st degree of latitude and Lindesnaes Lighthouse (Norway);
 - (2.) By a straight line drawn from Lindesnaes Lighthouse (Norway) to Hanstholm Lighthouse (Denmark);
 - (3.) By the coasts of Denmark, Germany, the Netherlands, Belgium, and France, as far as Gris Nez Lighthouse;
3. On the west:—
 - (1.) By a straight line drawn from Gris Nez Lighthouse (France) to the easternmost lighthouse at South Foreland (England);
 - (2.) By the eastern coasts of England and Scotland;
 - (3.) By a straight line joining Duncansby Head (Scotland) and the southern point of South Ronaldsha (Orkney Islands);
 - (4.) By the eastern coasts of the Orkney Islands;
 - (5.) By a straight line joining North Ronaldsha Lighthouse (Orkney Islands) and Sumburgh Head Lighthouse (Shetland Islands);
 - (6.) By the eastern coasts of the Shetland Islands;
 - (7.) By the meridian of North Unst Lighthouse (Shetland Islands) as far as the parallel of the 61st degree of latitude.

ARTICLE V.—The fishing boats of the high contracting parties shall be registered in accordance with the administrative regulations of each country (*t*). For each port there shall be a consecutive series of numbers, preceded by one or more initial letters, which shall be specified by the superior competent authority.

Each Government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other contracting Powers.

ARTICLE VI.—Fishing boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

ARTICLE VII.—The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 8 centim. in height and 12 millim. in breadth.

(*t*) See Order in Council : Stat. Rules and Orders, 1902 (No. 274), *post*.

ARTICLE VIII.—The letter or letters and numbers shall be placed on each bow of the boat, 8 or 10 centim. below the gunwale, and so as to be clearly visible. They shall be painted in white oil colour on a black ground.

The distance above mentioned shall not, however, be obligatory for boats of small burden, which may not have sufficient space below the gunwale.

For boats of fifteen tons burden and upwards the dimensions of the letters and numbers shall be 45 centim. in height and 6 centim. in breadth.

For boats of less than fifteen tons burden the dimensions shall be 25 centim. in height and 4 centim. in breadth.

The same letters and numbers shall also be painted in oil colour on each side of the mainsail of the boat, immediately above the close reef, and in such a manner as to be plainly visible. They shall be painted, on white sails *in black*, on black sails *in white*, and on sails of an intermediate shade *in black* or *in white*, as the superior competent authority shall deem the more effective (*tt*).

The letter or letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ARTICLE IX.—Fishing boats may not have, either on their outside or on their sails, any names, letters, or numbers other than those prescribed by Articles VI., VII., and VIII. of the present Convention.

ARTICLE X.—The names, letters and numbers placed on the boats and on their sails shall not be effaced, altered, made illegible, covered, or concealed in any manner whatsoever.

ARTICLE XI.—All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements, shall be marked with the letter or letters and numbers of the boats to which they belong.

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These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they think proper.

ARTICLE XII.—The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat.

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner, or the name of the firm or association to which she belongs.

ARTICLE XIII.—The nationality of a boat must not be concealed in any manner whatsoever.

ARTICLE XIV.—No fishing boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

194, 195

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or of any other compulsory circumstances.

ARTICLE XV.—Boats arriving on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each

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(*tt*) See Order in Council, Stat. Rules and Orders, 1890, p. 651.

other, or as to interfere with fishermen who have already commenced their operations.

- 195 ARTICLE XVI.—Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances, or that the damage was not caused by their fault.

- 195, 196. ARTICLE XVII.—No net or any other fishing engine shall be set or
198 anchored on grounds where drift-net fishing is actually going on.

- 194 ARTICLE XVIII. —No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other part of the fishing tackle of another fisherman.

- 195, 197, ARTICLE XIX.—When trawl fishermen are in sight of drift-net or of
198 long-line fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused, the responsibility shall lie on the trawlers, unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

- 193 ARTICLE XX.—When nets belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease if the impossibility of disengaging the nets by any other means is proved.

- 198 ARTICLE XXI.—When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls up the lines shall not cut them except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

- 194 ARTICLE XXII.—Except in cases of salvage and the cases to which the two preceding Articles relate, no fisherman shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

- 194 ARTICLE XXIII.—The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The high contracting parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing boats.

- 194 ARTICLE XXIV.—Fishing boats shall conform to the general rules respecting lights which have been, or may be, adopted by mutual arrangement between the high contracting parties with the view of preventing collisions at sea.

- 194 ARTICLE XXV.—All fishing boats, all their small boats, all rigging gear or other appurtenances of fishing boats, all nets, lines, buoys, floats, or other fishing implements whatsoever found or picked up at

sea, whether marked or unmarked, shall as soon as possible be delivered to the competent authority of the first port to which the salving boat returns or puts in.

Such authority shall inform the consul or consular agent of the country to which the boat of the salvor belongs, and of the nation of the owner of the articles found. They [the same authority] shall restore the articles to the owners thereof or to their representatives, as soon as such articles are claimed and the interests of the salvors have been properly guaranteed.

The administrative or judicial authorities, according as the laws of the different countries may provide, shall fix the amount which the owners shall pay to the salvors.

It is, however, agreed that this provision shall not in any way prejudice such conventions respecting this matter as are already in force, and that the high contracting parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salvaged.

Fishing implements of any kind found unmarked shall be treated as wreck.

ARTICLE XXVI.—The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the high contracting parties. In the case of Belgium, such vessels may be vessels belonging to the State, commanded by captains who hold commissions.

ARTICLE XXVII.—The execution of the regulations respecting the document establishing nationality, the marking and numbering of boats, &c., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI., VII., VIII., IX., X., XI., XII., XIII., and XXIII., § 2), is placed under the exclusive superintendence of the cruisers of the nation of each fishing boat.

Nevertheless, the commanders of cruisers shall acquaint each other with any infractions of the above-mentioned regulations committed by the fishermen of another nation.

ARTICLE XXVIII.—The cruisers of all the high contracting parties shall be competent to authenticate all infractions of the regulations prescribed by the present Convention, other than those referred to in Article XXVII., and all offences relating to fishing operations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ARTICLE XXIX.—When the commanders of cruisers have reason to believe that an infraction of the provisions of the present Convention has been committed, they may require the master of the boat inculpated to exhibit the official document establishing her nationality. The fact of such document having been exhibited shall then be endorsed upon it immediately.

The commanders of cruisers shall not pursue further their visit or search on boat a fishing boat which is not of their own nationality, unless it should be necessary for the purpose of obtaining proof of an offence or of a contravention of regulations respecting the police of the fisheries.

ARTICLE XXX.—The commanders of the cruisers of the Signatory Powers shall exercise their judgment as to the gravity of facts

brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing boats of the nationalities of the high contracting parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts as elicited both from the declarations of the parties interested and from the testimony of those present.

The commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fishermen belong. He may even take on board the cruiser a part of the crew of the fishing boat in order to hand them over to the authorities of her nation.

ARTICLE XXXI.—The formal statement referred to in the preceding Article shall be drawn up in the language of the commander of the cruiser, and according to the forms in use in his country.

The accused and the witnesses shall be entitled to add, or to have added, to such statement, in their own language, any observations or evidence which they may think suitable. Such declarations must be duly signed.

ARTICLE XXXII.—Resistance to the directions of commanders of cruisers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruiser, be considered as resistance to the authority of the nation of the fishing boat.

ARTICLE XXXIII.—When the act alleged is not of a serious character, but has nevertheless caused damage to any fisherman, the commanders of cruisers shall be at liberty, should the parties concerned agree to it, to arbitrate at sea between them, and to fix the compensation to be paid.

Where one of the parties is not in a position to settle the matter at once, the commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruiser, and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the Courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the commanders shall act in accordance with the provisions of Article XXX.

ARTICLE XXXIV.—The prosecutions for offences against, or contraventions of, the present Convention shall be instituted by, or in the name of, the State.

ARTICLE XXXV.—The high contracting parties engage to propose to their respective Legislatures the necessary measures for insuring the execution of the present Convention, and particularly for the punishment by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI. to XXIII. inclusive.

ARTICLE XXXVI.—In all cases of assault committed, or of wilful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of another nationality, the Courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offences against, and contraventions of, the present Convention.

ARTICLE XXXVII.—The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as summarily as the laws and regulations in force will permit.

ARTICLE XXXVIII.—The present Convention shall be ratified. The ratifications shall be exchanged at the Hague as soon as possible.

ARTICLE XXXIX.—The present Convention shall be brought into force from and after a day to be agreed upon by the high contracting parties.

The Convention shall continue in operation for five years from the above day; and, unless one of the high contracting parties shall, twelve months before the expiration of the said period of five years, give notice of intention to terminate its operation, shall continue in force one year longer, and so on from year to year. If, however, one of the signatory Powers should give notice to terminate the Convention, the same shall be maintained between the other contracting parties, unless they give a similar notice.

ADDITIONAL ARTICLE.—The Government of His Majesty the King of Sweden and Norway may adhere to the present Convention, for Sweden and for Norway, either jointly or separately.

This adhesion shall be notified to the Netherlands Government, and by it to the other signatory Powers.

In witness whereof the Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done at the Hague, in six copies, the 6th May, 1882.

(L.S.) W. STUART.
 (L.S.) C. M. KENNEDY.
 (L.S.) C. CECIL TREVOR.
 (L.S.) V. SCHMIDTHALS.
 (L.S.) CHR. DONNER.
 (L.S.) BON. A. D'ANETHAN.
 (L.S.) LÉOPOLD ORBAN.
 (L.S.) C. BRUUN.
 (L.S.) Cte. LEFÈVRE DE BÉHAINE.
 (L.S.) EM. MANCÉL.
 (L.S.) ROCHUSSEN.
 (L.S.) E. N. RAHUSEN.

SECOND SCHEDULE.

Enactments Repealed.

A description or citation of an Act in this schedule is inclusive of the word section, or other part first and last-mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

PART I.

Enactments wholly repealed.—[Repealed by Stat. Law Rev. Act, 1898, 61 & 62 Vict. c. 22.]

PART II.

Enactments repealed provisionally.

| Session and Chapter. | Title. | Extent of Repeal. |
|-------------------------|--|--|
| 31 & 32 Vict. c. 45. | The Sea Fisheries Act, 1868. | Sections three and four. Section five, from "the term consular officer" to "construed to mean consular officer." Sections six to sixteen. Sections twenty and twenty-one. Section fifty-nine. Section sixty-one. Section sixty-three, from the beginning of the section to "the satisfaction of the Court." The first schedule, except Articles four to eight, Article thirty-one, and the declaration and list of ports annexed to the Convention. |
| 38 Vict. c. 15. | An Act to amend the Sea Fisheries Act, 1868. | Section three. |

47 & 48 VICT. c. 11.

An Act for the further Protection of Fish other than Salmon in Fresh Waters. [19th May, 1884.]

Fishery board may make byelaws for determining mesh of nets.

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1. (1.) In any fishery district subject to a board of conservators, the conservators may from time to time make byelaws for all or any of the following purposes; that is to say,

- (i.) For determining the minimum size of the mesh of nets for catching freshwater fish which may be lawfully used within the district of such board, so that such mesh shall not be less than one inch from knot to knot, measured when wet, and so that no person shall be compelled to use a mesh larger than three inches from knot to knot measured when wet; and so that such byelaw shall not extend to any casting or dip net lawfully used for catching fish for bait;
- (ii.) For determining the length and size and description of nets for catching freshwater fish, which may be lawfully used within the district of such board, and the manner of using the same; and
- (iii.) For prohibiting the use of any mode or instrument of fishing for freshwater fish within the district of such board, where such mode or instrument appears to be prejudicial to the fisheries;

and may by any such byelaw impose a penalty not exceeding five pounds for each offence against any such byelaw, and provide for the seizure and for the forfeiture, on summary conviction, of nets, instruments, and devices used in contravention of any such byelaw,

and of fish found in the possession of a person contravening any such byelaw, and of fish caught by any such means, or in any such manner, as is contrary to any such byelaw, and such fish shall be deemed to be illegally caught, and any such forfeiture may be enforced by a court of summary jurisdiction.

Provided that no byelaw made under the authority of this section shall apply to any fixed nets for taking eels or to a landing net used as auxiliary to angling with a rod and line.

(2.) Sections thirty-nine to forty-five, both inclusive, and section sixty-two of the Salmon Fishery Act, 1873 (which sections relate to byelaws under that Act, and to the recovery, payment, and application of penalties under those byelaws), shall apply as if the said sections were herein re-enacted and in terms made applicable to byelaws under this Act and to the penalties thereby imposed^(u).

2. Fishery districts may be formed, and conservators appointed, for water frequented by any freshwater fish, and section six of the Freshwater Fisheries Act, 1878, shall apply as if "freshwater fish" were therein substituted for "trout and char," and "salmon trout or char," and section twenty-seven of the Salmon Fishery Act, 1865, shall apply as if "freshwater fish" were therein substituted for "salmon," and any conservators so appointed shall have the powers conferred on conservators by the Salmon Fishery Act, 1876.

3^(v). Section thirty-one of the Salmon Fishery Act, 1865, and sections thirty-six, thirty-seven, and thirty-eight of the Salmon Fishery Act, 1873 (which sections relate to the powers of water bailiffs), shall extend to all waters within the limits of this Act in like manner as if those sections were re-enacted in this Act, with the substitution of "freshwater fish" for "salmon," and of "waters frequented by freshwater fish" for "salmon river," and with a reference to the Freshwater Fisheries Act, 1878, and this Act, in substitution for the reference to the Salmon Fishery Acts, 1861 to 1873, or any of them.

4. In the application of section sixty-four of the Salmon Fishery Act, 1865, to trout and char in waters within the limits of the Freshwater Fisheries Act, 1878, the words "salmon river situate in a fishery district which is subject to a board of conservators appointed under this Act" shall be construed to mean "waters frequented by trout or char."

5. Sub-heads (c.) and (d.) of sub-section three of section eleven of the Freshwater Fisheries Act, 1878, shall be read and construed as if, after the word "taking," in each of the said sub-heads, were inserted the words "in any several fishery, with the leave of the

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36 & 37 Vict.
c. 71.Power to
form board
for coarse
fish district.205, 208,
22328 & 29 Vict.
c. 121.Powers of
water-bailiffs.
209, 210Explanation
of 41 & 42
Vict. c. 39,
s. 5.Limitations of
exemptions in
41 & 42 Vict.
c. 39, s. 11.¹

(u) As to place where proceedings may be instituted, see Salmon and Freshwater Fisheries Act, 1892, s. 4.

(v) Printed as amended by Stat. Law Rev. Act, 1898.

owner of such fishery, or in any public fishery, except where such taking in a public fishery is prohibited by a byelaw of any conservators."

Short title
and construc-
tion of Act.

6. This Act shall be construed as one with the Freshwater Fisheries Act, 1878, and that Act and this Act may together be cited as the Freshwater Fisheries Acts, 1878 and 1884, and this Act may be cited alone as the Freshwater Fisheries Act, 1884.

In the construction of this Act, the expression "freshwater fish" means any fish living permanently or temporarily in fresh water, exclusive of salmon.

Prohibition of
the use of
poison and
noxious sub-
stances for
destruction of
fish.

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7. Any person who unlawfully and maliciously puts any poison, lime, or noxious material in any water frequented by freshwater fish with intent thereby to destroy any of the fish that may then be or may thereafter be put therein shall be liable, on summary conviction, to a fine not exceeding twenty pounds or to imprisonment, with or without hard labour, for a term not exceeding two months.

Nothing in this section shall prevent a person being punished under any other Act, so that he be not punished twice for the same offence.

Application
of Acts to
Norfolk and
Suffolk.

8. This Act and the Freshwater Fisheries Act, 1878, with the exception of sub-sections one, two, and three of section eleven of the latter Act, shall apply to the counties of Norfolk and Suffolk and the county of the city of Norwich, subject as follows:—

40 & 41 Vict.
c. xcviii.

(a.) They shall apply to the waters to which the Norfolk and Suffolk Fisheries Act, 1877, applies in like manner as if those waters had been formed into a fishery district under this Act, and the conservators of the Norfolk and Suffolk Fisheries appointed under the Norfolk and Suffolk Fisheries Act, 1877, were a board of conservators appointed under this Act:

(b.) If in pursuance of this Act, and the enactments applied by this Act, the Board of Trade, on application made to them, form all or any of the waters to which the Norfolk and Suffolk Fisheries Act, 1877, does not apply in the said counties into a fishery district, the conservators of the Norfolk and Suffolk fisheries shall be the board of conservators for the said district, in like manner as if they were appointed in accordance with the said enactments, and such of the said enactments as relate to the mode of appointing a board of conservators shall not apply (x).

Extent of Act,

9. This Act shall not extend to Scotland or Ireland.

(x) Printed as amended by 49 & 50 Vict. c. 39, and Stat. Law Rev. Act, 1898.

47 & 48 VICT. c. 27.

An Act to further amend the Sea Fisheries Act, 1868.

[14th July, 1884.]

1. The powers conferred by Part III. of the Sea Fisheries Act, 1868, upon the Board of Trade to make orders with regard to oysters and mussels may be exercised by the Board of Trade with regard to cockles, in the same manner as if the expression "cockles" had been used in Part III. of that Act in addition to the expressions "oysters" and "mussels."

Extension of Part III. of 31 & 32 Vict. c. 45, to cockles.

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2. This Act may be cited as the Sea Fisheries Act, 1884.

Short title.

48 & 49 VICT. c. 78.

An Act to amend the Law relating to the Management of the Woods, Forests, and Land Revenues of the Crown. [14th August, 1885.]

1. This Act may be cited as the Crown Lands Act, 1885.

3. . . . Where an order under the Sea Fisheries Act, 1868, and the Acts amending the same, has been made for an oyster and mussel fishery as defined by that Act on part of the sea-shore within the meaning of that Act, and such part of that sea-shore or any portion thereof is under the management of the commissioners of Woods or of the Board of Trade, those commissioners or the Board of Trade, as the case may be, may grant a lease of so much of the said sea-shore as is under their management respectively, for a period not exceeding the duration of the rights conferred by the Order, and not exceeding sixty years. Any lease of sea-shore which may have been granted for a longer term than thirty-one years by the Board of Trade before the passing of this Act in respect of a fishery comprised in an Order made under the Sea Fisheries Act, 1868, and the Acts amending the same, shall be valid as if it had been granted under the powers of this Act.

Extension of duration of lease to fore-shore comprised in oyster or mussel fishery order. 31 & 32 Vict. c. 45.

49 VICT. c. 2.

An Act to declare the meaning of Section Eleven of the Freshwater Fisheries Act, 1878, so far as regards Eels. [15th March, 1886.]

[Preamble.—Recites 41 & 42 Vict. c. 39.]

1. It is hereby declared that the term "freshwater fish" in section eleven of the Freshwater Fisheries Act, 1878, does not include eels: Provided that nothing herein contained shall be deemed to authorise angling for eels during the close season mentioned in such section.

Section eleven of 41 & 42 Vict. c. 39, as to close time not to apply to eels.

2. This Act shall be construed as one with the Freshwater Fisheries Acts, 1878 and 1884, and together with those Acts may be cited as the Freshwater Fisheries Acts, 1878 to 1886, and this Act may be cited alone as the Freshwater Fisheries Act, 1886.

214, 221

Short title.

An Act to amend the Law relating to Salmon and Freshwater Fisheries. [25th June, 1886.]

Preliminary.

Short title.

1. This Act may be cited as the Salmon and Freshwater Fisheries Act, 1886.]

This Act shall be construed as one with the Salmon and Freshwater Fisheries Acts; and those Acts and this Act may be cited collectively as the Salmon and Freshwater Fisheries Acts, 1861 to 1886.

2. *Commencement of Act, 1st October, 1886.*—[Repealed by Stat. Law Rev. Act, 1898.]

Salmon and Freshwater Fisheries.

Transfer to the Board of Trade of powers and duties of Home Office.

3. From and after the commencement of this Act all the powers and duties of the Secretary of State and of the Home Office under the Salmon and Freshwater Fisheries Acts shall be transferred to and be exercised by the Board of Trade, and for the purpose of giving effect to this Act, the Salmon and Freshwater Fisheries Acts shall be read and construed as if the Board of Trade were named therein instead of the Secretary of State or the Home Office.

The powers and duties of the inspectors appointed under the Salmon and Freshwater Fisheries Acts by the Home Office shall, from and after the commencement of this Act, be exercised by the inspectors then existing, and by the inspectors hereafter to be appointed by the Board of Trade under the provisions of the said Acts as amended by this Act: Provided always, that in all cases in which, under the said Acts or any of them, the approval of any inspector is required for any grating, as defined in the said Acts, the Board of Trade shall, from and after the commencement of this Act, be the authority who shall and may approve such grating, instead of such inspector.

Proceedings of Board of Trade.

4.—(1.) All documents purporting to be orders, certificates, or other documents made or issued by the Board of Trade under the said Acts, or any of them, and to be sealed with the seal of the said Board, or to be signed by a secretary or assistant secretary of the Board, shall be received in evidence, and deemed to be such orders, certificates, or other documents without further proof, unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order, direction, or determination, made or given, certificate issued, or act done, is the order, direction, determination, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

(3.) Every copy of any order, certificate, or other document made, given, or issued by the Home Office, the Board of Trade, or an

inspector, under the provisions of the Salmon and Freshwater Fisheries Acts, or any of them, or of this Act, certified to be a true copy of such order, certificate, or other document, by a secretary or assistant secretary of the Board of Trade, or an inspector acting or appointed under the said Acts, or any of them, or this Act, and purporting to be sealed with the seal of the said Board, or to be signed by such secretary, assistant secretary, or inspector, shall be received in evidence, and have the same effect to all intents and purposes as the original.

5. Nothing in this Act contained shall render invalid anything done, or suffered, or take away any right or privilege acquired, or duty imposed, or liability or disqualification incurred before the commencement of this Act under the Salmon and Freshwater Fisheries Acts or any of them.

Saving as to things done before the commencement of the Act.

6. The provisions of section thirty-two of the Salmon Fishery Act, 1861, as amended by this Act, relating to annual reports from inspectors to be laid before Parliament, shall, so far as practicable, extend and apply to all salmon, freshwater, and sea fisheries, over which, under the Salmon and Freshwater Fisheries Acts as amended by this Act, or any other Acts, the Board of Trade have jurisdiction or control.

Reports to be laid before Parliament.
[24 & 25 Vict. c. 109, s. 32.]

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7. In this Act, unless the context otherwise requires, the expression "Salmon and Freshwater Fisheries Acts" means the Acts set forth in the Schedule to this Act.

Definition.

SCHEDULE.

SALMON AND FRESHWATER FISHERIES ACTS.

| Session and Chapter of Act. | Title. |
|-----------------------------|--|
| 24 & 25 Vict. c. 109 . . . | The Salmon Fishery Act, 1861. |
| 26 Vict. c. 10 . . . | The Salmon Acts Amendment Act, 1863. |
| 28 & 29 Vict. c. 121 . . . | The Salmon Fishery Act, 1865. |
| 33 & 34 Vict. c. 33 . . . | The Salmon Acts Amendment Act, 1870. |
| 36 & 37 Vict. c. 71 . . . | The Salmon Fishery Act, 1873. |
| 39 & 40 Vict. c. 19 . . . | The Salmon Fishery Act, 1876. |
| 39 & 40 Vict. c. 34 . . . | The Elver Fishing Act, 1876. |
| 40 & 41 Vict. c. 65 . . . | The Fisheries (Dynamite) Act, 1877. |
| 40 & 41 Vict. c. xcvi. . . | The Norfolk and Suffolk Fisheries Act, 1877. |
| 41 & 42 Vict. c. 39 . . . | The Freshwater Fisheries Act, 1878. |
| 42 & 43 Vict. c. 26 . . . | The Salmon Fishery Law Amendment Act, 1879. |
| 47 Vict. c. 11 . . . | The Freshwater Fisheries Act, 1884. |
| 49 Vict. c. 2 . . . | The Freshwater Fisheries Act, 1886. |

An Act for the Regulation of the Sea Fisheries of England and Wales.

[24th December, 1888.]

[This Act is amended by the Fisheries Act, 1891, Part II., 54 & 55 Vict. c. 37.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Establish-
ment of sea
fisheries dis-
tricts and
local fisheries
committees.

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1.—(1.) The Board of Trade may from time to time on the application of a county council or borough council, by order,

- (a) create a sea fisheries district comprising any part of the sea within which Her Majesty's subjects have by international law the exclusive right of fishing, either with or without any part of the adjoining coast of England and Wales ; and
- (b) define the limits of the district, and the area chargeable with any expenses under this Act ; and
- (c) provide for the constitution of a local fisheries committee for the regulation of the sea fisheries carried on within the district ;

and may from time to time on like application by subsequent order vary any order made under this section, or unite two or more districts or parts of districts into a separate district, or dissolve any district that may have been formed.

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(2.) The local fisheries committee for a sea fisheries district shall be a committee of a county council or borough council, or, if two or more councils appear to be interested, a joint committee of those councils, with the addition in each case of such members representing the fishing interests of the district, including members representing any board of salmon conservators having jurisdiction within the district, as may be directed by the order creating the district, such number of fishery members not being in the aggregate less than the number of members of the county or borough councils provided by the order creating the district. The fishery members shall hold office for the same time as the members appointed by the county or borough council or councils, and any vacancy amongst the fishery members which may arise in the interval shall be filled up by a representative of the fishing interest in respect of which it occurs. The members representing a board of salmon conservators shall be appointed by that board.

(3.) The law relating to committees and joint committees of county councils shall, subject to the provisions of the order constituting a local fisheries committee, apply to the local fisheries committee in like manner as if the powers and duties of that committee were powers and duties transferred by the Local Government Act, 1888, to the council or councils represented on the committee

and delegated to the committee by the said council or councils, and as if any borough council represented on the committee were a county council.

(4.) Every order made by the Board of Trade under this section shall be laid for thirty days before both Houses of Parliament while in session, and if either House within that period resolves that the whole or any part of the order ought not to be enforced the same shall not have any force, without prejudice nevertheless to the making of any other order in its place. Subject to any such resolution, every order so made shall come into force at the expiration of the thirty days aforesaid.

(5.) In case a county council or borough council, to whom application has been made by not less than twenty inhabitant ratepayers interested in sea fisheries, refuse or neglect to apply to the Board of Trade to create a sea fisheries district for the space of six months from the date of the application, the persons making such application shall, within twelve months from the date thereof, be entitled to apply to the Board of Trade for an order establishing such sea fisheries district, and the Board of Trade shall, unless the council can show to their satisfaction that such order should not be made, proceed as if an application had been made by the council.

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(6.) Before making any order creating a sea fisheries district the Board of Trade shall cause the draft of such order to be locally published in such manner as they direct, and shall, if any objections are made to such orders, or any of the provisions thereof, cause such local inquiry to be held as may in their opinion be required. Due notice of such inquiry shall be given by advertisement or otherwise, and the report of the person holding such inquiry shall, if the order is made, be laid with the order before both Houses of Parliament.

2.—(1.) A local fisheries committee for a sea fisheries district may from time to time, subject to such regulations (y) as may be

Byelaws for
regulation of
sea fisheries.

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(y) The following regulations were made by the Board of Trade, 9th November, 1894; see Stat. Rules and Orders, 1899, p. 1828:—

1. No byelaw shall be made unless notice of an intention to propose the same shall have been given in the notice convening the meeting at which the same is proposed, which notice shall be served by post or otherwise on each member of the committee fourteen days at least before the date of such meeting.

2. The byelaw as made shall not differ in any material particular from that set forth in the notice.

3. The byelaw or byelaws shall specify the penalty to be imposed for any breach thereof.

4. Notice of the intention to apply to the Board of Trade for confirmation of any byelaw shall be given by advertisement once in each of two consecutive weeks, in one or more newspapers circulating in the neighbourhood of the district,

made in that behalf by the Board of Trade, make byelaws, to be observed within their district, for all or any of the following purposes, namely,—

- (a) For restricting or prohibiting, either absolutely or subject to such regulations as may be provided by the byelaws, any method of fishing for sea fish or the use of any instrument of fishing for sea fish, and for determining the size of mesh, form, and dimensions of any instrument of fishing for sea fish ;
- (b) For constituting within their district any district of oyster cultivation for the purposes of section four of the Fisheries (Oyster, Crab, and Lobster) Act, 1877 ;
- (c) For directing that the proviso to section eight of the Fisheries (Oyster, Crab, and Lobster) Act, 1877, which permits edible crabs in certain conditions or under a certain size to be taken by or be in the possession of any person if those crabs are intended for bait for fishing, shall not apply (z) ;

40 & 41 Vict.
c. 42.

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and shall, together with a copy of the byelaw, be forwarded forthwith to the Secretary to the Admiralty.

The notice shall include—

- (a) A description of the purport of the byelaw ;
- (b) A notice of the place at which a copy of the byelaw may be inspected, free of charge, or may be obtained on payment of one penny ;
- (c) A notice that any person objecting to the confirmation of the byelaw may forward a statement of his objection in writing to the Board of Trade on or before a specified date, being twenty-eight days after the date of the first advertisement, and that such objector is required at the same time to forward a copy of the statement to the clerk of the committee.

The advertisement shall be signed by the clerk of the committee, and shall set forth his address.

5. The application for confirmation of the byelaws shall be forwarded to the Board of Trade, after the expiration of twenty-eight days from the date of the first advertisement, and shall have attached to it—

- (a) Two copies of the byelaw signed by the clerk of the committee ;
- (b) A copy of the notice convening the meeting at which the byelaw was made, endorsed with a certificate under the hand of the person by whom the same was issued that it was duly served in the manner hereinbefore directed, and specifying the latest date of such service ;
- (c) A copy of each newspaper in which the advertisement appeared ;
- (d) A certificate of the date of service of the notice and byelaw on the Secretary to the Admiralty.

6. All communications forwarded to the Board of Trade shall be on foolscap paper, and shall be addressed to the "Assistant Secretary, Fisheries Department, Board of Trade, London, S.W."

7. In these regulations the expression "committee" shall be understood to include a board of conservators, or a harbour authority exercising the powers of a committee, and the expression "district" to include the area of jurisdiction of such a board or authority. In the case of a corporate body, the seal of such body shall be attached to the copies of the byelaw submitted for confirmation.

(z) Local fisheries committees also have power to make byelaws restricting or prohibiting the taking of any kind of sea fish ; see the Fisheries Act, 1891, s. 7. They have also power to make byelaws for other purposes : see Sea Fisheries (Shellfish) Regulation Act, 1894, s. 1, *post*.

- (d) For repealing or amending any order (*a*) made under section 202 ten of the Fisheries (Oyster, Crab, and Lobster) Act, 1877, or under the Fisheries (Oyster, Crab, and Lobster) Act (1877) Amendment Act, 1884; 47 & 48 Vict. c. 26. 187, 212
- (e) For prohibiting or regulating the deposit or discharge of any solid or liquid substance detrimental to sea fish or sea fishing; and
- (f) For repealing or amending any byelaw made in pursuance of this Act.

(2.) A byelaw made in pursuance of this Act may provide for its application either to the whole or any specified part or parts of the district for which it is made, and either during the whole or any specified part or parts of the year.

3. A local fisheries committee may, by their byelaws, impose as penalties for the breach of any byelaw fines not exceeding for any one offence the sum of twenty pounds, and in the case of a continuing offence the additional sum of ten pounds for every day during which the offence continues, and in any case forfeiture of any fishing instrument used or sea fish taken in contravention of, or found in the possession of a person contravening, any byelaw; and any such penalties may be recovered and enforced on summary conviction (*b*). Penalties for breach of byelaws.

4.—(1.) A byelaw made in pursuance of this Act shall not be of any validity until it has been confirmed by the Board of Trade. Confirmation of byelaws.

(2.) The Board of Trade may, if they think fit, before confirming a byelaw made in pursuance of this Act, cause such local inquiry as they think fit to be held with respect to the byelaw and may, in any case, confirm any such byelaw, either without modifications, or with such modifications as may be assented to by the local fisheries committee.

5.—(1.) The local fisheries committee shall cause copies of all byelaws made by them under this Act, and for the time being in force, to be kept posted up in some conspicuous place or places within their district, and shall supply copies of all such byelaws to any applicant, on payment of a sum not exceeding one penny for each copy. Copies and evidence of byelaws.

(2.) The production of a copy of any byelaw made in pursuance of this Act, purporting to be signed by a secretary or assistant secretary of the Board of Trade, shall be conclusive evidence of the byelaw and of the due making and confirmation thereof.

(a) *I.e.*, Orders made by the Board of Trade. The Fisheries (Oyster, Crab, and Lobster) Act, 1877, Amendment Act, 1884, is repealed by this Act; see schedule, *post*.

(b) For jurisdiction as to offences, see Fisheries Act, 1891, s. 5.

Appointment
and powers
of fishery
officers.

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6.—(1.) Subject to any restrictions or conditions as to expenditure made by the council or councils by whom a local fisheries committee is appointed, the committee may appoint such fishery officers as they deem expedient (c) for the purpose of enforcing the observance within their district of byelaws made by the committee : Provided that nothing in this section shall exempt the coastguard and Admiralty officers from their statutory duty in enforcing the laws and regulations affecting vessels engaged in sea fishing.

(2.) (d) For the purpose of enforcing those byelaws every such fishery officer may within the limits of the district, or of any adjoining sea fisheries district or district under the jurisdiction of salmon conservators, or of a harbour authority,—

- (a) Stop and search any vessel or vehicle used within the district in fishing or in conveying either fish or any substance the deposit or discharge of which is prohibited or regulated by any such byelaws ; and
- (b) Search and examine all instruments used in catching or carrying fish ; and
- (c) Seize any sea fish or instrument liable to be forfeited in pursuance of any such byelaws.

(3.) If any person without reasonable excuse (proof whereof shall lie on him) refuses to allow any such officer to exercise the powers conferred upon him by this Act, or resists or obstructs any such officer in the performance of his duty, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.

(4.) For the enforcement of the provisions of any such byelaws every such officer shall be deemed to be a constable, and to have the same powers and privileges and be subject to the same liabilities as a constable duly appointed has and is subject to in his constable-wick at common law or by statute.

(5.) A local fisheries committee may, with the consent of any board of salmon conservators, appoint as an officer of the committee any officer of the board ; and a board of salmon conservators may, with the consent of a local fisheries committee, appoint as an officer of the board any officer of the committee.

Power to enter
suspected
places.

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7. It shall be lawful for any justice of the peace upon information on oath that there is probable cause to suspect any breach of any

(c) The restrictions and conditions as to expenditure in connection with the appointment of an officer must be made before the officer is appointed : *The Queen v. Mayor of Plymouth*, [1896] 1 Q. B. 158. Where a local fisheries committee has been appointed by more county or borough councils than one, it is not open to any one of such councils to make restrictions and conditions as to expenditure. The conditions and restrictions referred to in this section can only be imposed by the common agreement of all the councils represented on the committee : *Reg. v. North Riding of Yorkshire County Court*, [1899] 1 Q. B. 201.

(d) See also the Fisheries Act, 1891, ss. 9—13.

byelaw made under this Act to have been committed on any premises, or that any sea fish or instrument liable to be forfeited in pursuance of any such byelaw is concealed on any premises, by warrant under his hand and seal to authorise and empower any fishery officer appointed under this Act, or any police officer, to enter the premises for the purpose of detecting the offence or the concealed fish or instrument at such time or times in the day or night as in the warrant may be mentioned, and to seize any such fish or instruments which may be found on the premises: Provided that the warrant shall not continue in force for more than one week from the date thereof.

8. Every local fisheries committee shall collect such statistics relating to the sea fisheries within the district of the committee and make such returns to the Board of Trade as to the proceedings of the committee under this Act and as to the sea fisheries aforesaid as the Board of Trade may reasonably require: Provided that any expenses which the local fisheries committee may be required by the Board of Trade to incur in the collection of statistics shall be borne by moneys to be provided by Parliament.

Returns by
local fisheries
committees.

9. The Board of Trade shall convene a meeting composed of not less than one representative selected by each of the local fisheries committees at least once in each year, to confer with the heads of the Fishery Department of the Board of Trade, and for consultative purposes on matters relating to this Act.

Annual
meeting of
representa-
tives of local
committees.

10. The expenses of a local fisheries committee, so far as payable by a county council, shall, according as is provided by the order providing for the constitution of the local fisheries committee, be general or special expenses within the meaning of the Local Government Act, 1888, and if special expenses shall be charged in manner directed by the order, and the expenses of the committee, so far as payable by the council of a borough, shall be paid out of the borough rate or borough fund (e).

Expenses of
committee.

51 & 52 Vict.
c. 41.

11. An order providing for the constitution of a local fisheries committee may contain such regulations consistent with this Act with respect to the number and mode of appointment of the members of the committee, and with respect to other matters relating to the constitution of the committee, as may seem expedient to the Board of Trade.

Contents of
order for
constitution
of committee.

12.—(1.) Where a proposed sea fisheries district will adjoin or overlap the district of a board of salmon conservators, the Board of Trade shall, by the order defining the limits of the sea fisheries district, draw a line at or near the mouth of every river or stream flowing into the sea, or into any estuary within those limits, or

Relations of
local fisheries
committees to
conservators
under Salmon
Acts and
harbour
authorities.

(e) See also the Fisheries Act, 1891, s. 10.

at the option of the Board of Trade at or near the mouth of any estuary within those limits, and the sea fisheries district shall not extend into any such river, stream, or estuary above that line; but the order may provide that with respect to any such river, stream, or estuary, or any area subject to a byelaw made under section thirty-nine, sub-section eight, of the Salmon Fishery Act, 1873, the conservators shall have the powers of a local fisheries committee.

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(2.) Where an area is under the jurisdiction of salmon conservators, or of a harbour authority, and an application for the creation of a sea fisheries district comprising that area or any part thereof has not been made or has been refused, the Board of Trade may, if they think fit, by order, confer on the conservators or harbour authority the powers of a local fisheries committee with respect to that area, and may vary or rescind any such order if the area, or any part thereof, is subsequently comprised in a sea fisheries district.

(3.) A local fisheries committee shall not have jurisdiction within any area for the time being subject to a byelaw made under section thirty-nine, sub-section eight, of the Salmon Fishery Act, 1873.

(4.) Where salmon conservators or a harbour authority have the powers of a local fisheries committee in pursuance of this section, those powers shall be exercised subject to the same conditions as if exercised by a local fisheries committee, and the provisions of this Act shall apply in the case of byelaws made or officers appointed in exercise of any such powers as if the byelaws were made or the officers appointed by a local fisheries committee.

Saving for
several
fisheries, &c.

13. Nothing in this Act shall authorise a local fisheries committee to make any byelaw

(a) prejudicially affecting any right of several fishery, or any right on, to, or over any portion of the seashore, where any such right is enjoyed by any person under any local or special Act of Parliament, or any Royal charter, letters patent, prescription, or immemorial usage, without the consent of that person; or

(b) affecting any byelaw made, or to be made, by a board of salmon conservators, and for the time being in force within the district of the committee, or restricting the power of a board of salmon conservators to make any such byelaw; or

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(c) affecting any power of a sanitary or other local authority to discharge sewage in pursuance of any power given by a general or local Act of Parliament, or by a Provisional Order confirmed by Parliament.

Definitions.

14. For the purposes of this Act—

The expression "county council" shall mean a county council established under the Local Government Act, 1888.

- The expression "borough council" shall mean the council of any municipal borough containing, according to the census of 1881, a population of not less than 20,000.
- The expression "sea fish" shall not include salmon as defined by any Act relating to salmon, but, save as aforesaid, shall mean fish of all kinds found in the sea, and shall also include lobsters, crabs, shrimps, prawns, oysters, mussels, cockles, and other kinds of crustaceans and shell fish.
- The expression "sea" includes the coast up to high-water mark.
- The expression "vessel" includes ship, boat, lighter, and craft of every kind, whether stationary or navigated by steam or otherwise.
- The expression "person" includes any body of persons corporate or unincorporate.
- The expression "fishing interests" includes all persons interested in fisheries, either as owners of fisheries or interests therein, fishermen, fishing-boat owners, smack owners, fish curers, fish merchants, or otherwise, and any board of salmon conservators.
- The expression "salmon conservators" means conservators under the Salmon and Freshwater Fisheries Acts, 1861 to 1886, or any of them.
- The expression "harbour authority" means any body corporate, persons, or person being or claiming to be proprietors or proprietor of, or entrusted with the duty of improving, managing, maintaining, or regulating any harbour.
- 15.** This Act shall not extend to Scotland or Ireland. Extent of Act.
- 16.** The Acts described in the Schedule to this Act are hereby repealed, without prejudice to any order made or thing done under any such Act before the passing of this Act. Repeal.
- 17.** This Act may be cited as the Sea Fisheries Regulation Act, 1888. Short title.

SCHEDULE.

ACTS REPEALED.

| Session and Chapter. | Short Title. |
|----------------------|---|
| 44 & 45 Vict. c. 11 | The Sea Fisheries (Clam and Bait Beds) Act, 1881. |
| 47 & 48 Vict. c. 26 | The Fisheries (Oyster, Crab, and Lobster) Act (1877) Amendment Act, 1884. |

An Act to carry into effect an International Declaration respecting the North Sea Fisheries, and to amend the Law relating to Sea Fisheries and Salmon and Freshwater Fisheries.

[21st July, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

BELGIAN DECLARATION AND SEA FISHERIES ACT, 1883.

Confirmation
of Declaration.

1. The Declaration set out in the Schedule to this Act (hereinafter referred to as the Scheduled Declaration) is hereby confirmed, and the Articles thereof shall be of the same force as if they were enacted in the body of this Act.

Powers of
commission
appointed
under declara-
tion.

17 & 18 Vict.
c. 104.

2.—(1.) Any commission appointed by the Board of Trade in pursuance of Article One of the Scheduled Declaration shall, for the purpose of its duties, have the same powers as an inspector appointed by the Board of Trade in pursuance of section fourteen of the Merchant Shipping Act, 1854 (*f*), and sections fifteen and sixteen of that Act shall apply as if the commission were such an inspector.

(2.) Any such commission may take security, in such form (*g*) as the Board of Trade may by rule prescribe, for the attendance of a witness before a Court of justice in Belgium, and any sum which may become due in pursuance of such a security may be recovered in like manner as a sum due in pursuance of a security given under the Summary Jurisdiction Act, 1879.

42 & 43 Vict.
c. 49.

Evidence of
report or
certificate
under
Article 3 of
Declaration.

3. A document purporting to be certified by a Secretary or Assistant Secretary of the Board of Trade to be a report made or certificate given in pursuance of Article Three of the Scheduled Declaration shall be deemed to be such a report or certificate and to have been duly forwarded.

Punishment
for violation
of Article 4 of
Declaration.

46 & 47 Vict.
c. 22.

4. If, either within or without the exclusive fishery limits of the British Islands, any person belonging to a British sea fishing boat acts in contravention of Article Four of the Scheduled Declaration, he shall be liable to the like penalty as for a contravention of Articles Thirteen to Twenty-two of the First Schedule to the Sea Fisheries Act, 1883 (*h*).

(*f*) Now sects. 728, 729, 730 of the Merchant Shipping Act, 1894.

(*g*) The Board of Trade have prescribed such forms ; see Stat. Rules and Orders, 1891, p. 292.

(*h*) Fine not exceeding 50*l.*, or imprisonment for a term not exceeding three months with or without hard labour.

Provided that if the Scheduled Declaration ceases to be binding on Her Majesty, this section shall cease to apply in the case of injuries to the gear or boat of a fisherman being a subject of the foreign State party to the Declaration, but shall nevertheless continue to apply as between British subjects.

5. In the event of any contravention of section seven of the Sea Fisheries Act, 1883, on the part of any foreign sea fishing boat, or of any person belonging thereto, any fish or fishing gear found in the boat or shown to have been taken or used by any person belonging to the boat within the exclusive fishery limits of the British Islands shall, on conviction for the offence, be liable to be forfeited.

Forfeiture
for offence
against
46 & 47 Vict.
c. 22, s. 7.
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6.—(1.) This Part of this Act shall be construed as one with the Sea Fisheries Act, 1883, and, so far as relates to Scotland and the parts of the sea adjoining Scotland, also as one with the Sea Fisheries (Scotland) Amendment Act, 1885.

Construction,
title, and
commence-
ment of this
Part of Act.
48 & 49 Vict
c. 70.

(2.) In particular, the powers of making Orders in Council conferred by sections three and twenty-three of the Sea Fisheries Act, 1883, may be exercised for the purposes of this Part of this Act, and section twenty-three of the said Act shall, for the purpose of any such Order, apply as if the Schedule to this Act were the First Schedule to that Act, and the Declaration referred to in this Act were the Convention referred to in that Act.

(3.) The Sea Fisheries Act, 1883, the Sea Fisheries (Scotland) Amendment Act, 1885, and this Part of this Act may be cited collectively as the Sea Fisheries Acts, 1883 to 1891.

(4.) This Part of this Act shall come into force on such day as may be fixed in that behalf by a notice published in the London Gazette (*i*).

PART II.

SEA FISHERIES REGULATION ACT, 1888.

7. The powers of a local fisheries committee to make byelaws in pursuance of section two of the Sea Fisheries Regulation Act, 1888, shall extend to making byelaws, to be observed within their district, for restricting or prohibiting, either entirely or subject to any exceptions and regulations, the fishing for or taking of all or any specified kinds of sea fish during any period specified in any such byelaw.

Extension of
powers of
local fisheries
committee
for making
byelaws.
51 & 52 Vict.
c. 54.

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8. Where any offence under the Sea Fisheries Regulation Act, 1888, or under any byelaw made in pursuance thereof, is committed on the sea coast or at sea beyond the ordinary jurisdiction of a Court of summary jurisdiction and not on or from a ship or boat, it shall be deemed to have been committed within the body of any county

Jurisdiction
as to offences.

i The date was 15th September, 1891: see London Gazette, 1891, p. 4777; Stat. Rules and Orders, 1891, p. 292.

abutting on that sea coast or adjoining that sea, and may be tried and punished accordingly.

Powers of local fisheries committee for enforcement of Sea Fisheries Acts.

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Power for county council, &c. to pay or contribute expenses under 51 & 52 Vict. c. 54. Construction and short title of Part of Act.

9. A local fisheries committee appointed in pursuance of the Sea Fisheries Regulation Act, 1888, may, within their district, enforce the provisions of the Fisheries (Oyster, Crab, and Lobster) Act, 1877, and of any other Act relating to sea fisheries.

10. Any county or borough council may, if they think fit, pay or contribute to any expenses incurred by a board of salmon conservators in exercise of their powers under the Sea Fisheries Regulation Act, 1888.

11. This Part of this Act shall be construed as one with the Sea Fisheries Regulation Act, 1888, and that Act and this Part of this Act may be cited collectively as the Sea Fisheries Regulation Acts, 1888 and 1891.

PART III.

SALMON AND FRESHWATER FISHERIES.

Power to constitute Stour fishery district.

12.—(1.) The Board of Trade may, if they think fit, issue a certificate forming a fishery district for the river Stour (dividing the counties of Suffolk and Essex), its estuary, and its tributaries, and such waters and coasts as may be declared in the certificate to belong thereto, and may thereby fix the number of conservators to be appointed as a board, and the number of the members of the board of conservators to be appointed by each county in the district, and may make such other arrangements as may seem to the Board necessary or proper in connexion with the formation of the district.

40 & 41 Vict. c. 98.
47 & 48 Vict. c. 11.

(2.) On the issue of a certificate under this section the provisions of the Norfolk and Suffolk Fisheries Act, 1877, and of section eight of the Freshwater Fisheries Act, 1884, shall cease to apply within the district formed by the certificate, and the provisions of the Salmon and Freshwater Fisheries Acts, 1861 to 1886, shall apply therein as if no part of the district were included in the county of Suffolk, and the district so formed shall for all purposes be deemed to be a district formed under the provisions of the said Salmon and Freshwater Fisheries Acts other than the Norfolk and Suffolk Fisheries Act, 1877.

(3.) On the issue of the certificate the certificates of the formation of the Stour (Essex), and Stour (Suffolk) fishery districts, dated the nineteenth day of March, one thousand eight hundred and eighty-eight, shall cease to have effect, so, however, that nothing in this section shall affect the validity of anything done or suffered under the certificates, and that all proceedings under the certificates and pending at the date of the issue of the new certificate may be carried on and completed as if the old certificates were in force.

(4.) Any byelaws made under the Salmon and Freshwater Fisheries Acts, 1861 to 1886, or any of them, and in force within the districts or either of them at the date of the new certificate, shall, notwithstanding any limitation of time for the continuance of such byelaw, continue to be in force until repealed by the board of conservators of the new district, and the board may, if it thinks fit, repeal any such byelaws in manner provided for the repeal of byelaws made under the Freshwater Fisheries Act, 1884.

4 & 48 Vict.
c. 11.

(5.) The persons who are at the date of the issue of the new certificate the members of the board of conservators of the Stour (Essex) fishery district shall be the first appointed members representing the county of Essex on the board of the new district, and shall come into office on the issue of the certificate.

PART IV.

GENERAL.

13. The powers conferred by the Sea Fisheries Act, 1883, or this Act, or any other Act relating to sea fisheries, or by any Act relating to salmon and freshwater fisheries, upon any authorities or officers to enforce any such Act shall not be construed as limiting or taking away the power of any other person to take legal proceedings for the enforcement of any such Act or of any byelaw made thereunder (*k*).

Explanation
as to power
of taking legal
proceedings
for enforcing
Fisheries
Acts.

14. This Act may be cited as the Fisheries Act, 1891.

Short title.

SCHEDULE.

DECLARATION RESPECTING THE NORTH SEA FISHERIES.

THE Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the Government of His Majesty the King of the Belgians, being desirous of simplifying the procedure for the settlement of differences between British and Belgian fishermen in the North Sea outside territorial waters, and of reducing as much as possible the injuries they may sustain from the fouling of their fishing gear, have agreed upon the following provisions:—

ARTICLE I.—Whenever a complaint involving a claim for damages shall be preferred by a fisherman of one of the two countries against a fisherman of the other country, it shall be referred for preliminary inquiry—in Belgium, to a commission composed of, at least, two officers appointed by the Minister of Railways, Posts, and Telegraphs; in the United Kingdom, to a commission also composed of, at least, two officers appointed by the Board of Trade; these officers shall hold their inquiry at the place where the allegations of the complainants can most easily be verified.

(*k*) A water bailiff can institute proceedings without the authority of the conservators: *Pollack v. Moses*, (1894) 70 L. T. 378, overruling *Anderson v. Hamlin*, (1890) 25 Q. B. D. 221.

ARTICLE II.—No complaint shall be transmitted either to the British or to the Belgian Government, as the case may be, unless:—

1. The commission has recognised it as well founded;
2. Such fishermen as are specified by the commission engage themselves to appear in person in case they should be summoned to give evidence.

ARTICLE III.—The complaints must be accompanied by—

1. A report from the commission of inquiry;
2. A certificate from this commission, verifying the ownership of the lost or injured fishing gear;
3. A certificate of an expert nominated (as the case may be), in the United Kingdom by the Board of Trade, in Belgium, by the Minister of Railways, Posts, and Telegraphs, and giving an estimate of the damages in money value.

These certificates must be forwarded through the proper diplomatic channel, and shall be received as evidence unless the contrary is proved.

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ARTICLE IV.—When a fisherman fouls or otherwise interferes with the fishing gear of another fisherman he shall take all necessary measures for reducing to a minimum the injuries which may result to the gear or to the boat of the other fisherman.

ARTICLE V.—In the Kingdom of Belgium the tribunal which has cognizance of an infraction of the North Sea Fisheries Convention of the 6th May, 1882, or of Article IV. of the present declaration, shall be empowered to award damages for injury to person or property at the request of the injured party and at the suit of the official prosecutor.

The execution of awards of damages shall be effected, on the application of the official prosecutor, by the competent administration, which will advance the costs and recover them from the condemned parties according to the usual process of law in such cases.

In the United Kingdom the Court before which proceedings are taken for the above-mentioned infractions shall be empowered, at the suit of the official prosecutor on the request of the injured party, to award damages for injury to person or property, and the official prosecutor shall, at his own cost, recover the sum so awarded, or so much thereof as is possible, from the parties liable.

The amount of damages recovered, as stipulated above, shall be remitted free of cost to the injured party through the proper diplomatic channel.

ARTICLE VI.—The high contracting parties engage to take, or to propose to their respective Legislatures, the necessary measures for insuring the execution of the present declaration, and especially for punishing, either by fine or imprisonment, or both, persons who may contravene Article IV.

ARTICLE VII.—The present declaration shall be ratified, and the ratifications shall be exchanged at Brussels as soon as possible.

ARTICLE VIII.—The present declaration shall come into force at a date to be agreed upon subsequently by the high contracting parties.

It shall remain in force for three years from that date, and in the event of neither of the high contracting parties having notified

twelve months before the expiry of the said period of three years their intention of terminating it, it shall continue to remain in force for a year, and so on from year to year.

In witness whereof the undersigned Envoy Extraordinary and Minister Plenipotentiary at Brussels of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the undersigned Minister for Foreign Affairs of His Majesty the King of the Belgians, have drawn up the present Declaration in duplicate, and have affixed thereto the seals of their arms.

Done at Brussels, the 2nd May, 1891.

(L.S.) VIVIAN.

(L.S.) Le Prince DE CHIMAY.

55 & 56 VICT. C. 50.

An Act to amend the Law relating to Salmon and Freshwater Fisheries. [27th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Salmon and Freshwater Fisheries Act, 1892, and, so far as is consistent with the tenor thereof, shall be read as one with the Salmon and Freshwater Fisheries Acts, 1861 to 1886, and with Parts III. and IV. of the Fisheries Act, 1891, and those Acts and this Act may collectively be cited as the Salmon and Freshwater Fisheries Acts, 1861 to 1892.

2. This Act shall not extend to Scotland or Ireland.

3. During the period between the third day of September and the first day of February, both inclusive, no person shall consign or send by any common or other carrier any salmon trout or char unless the package containing the same shall be conspicuously marked by painting or branding the word salmon trout or char respectively on the outside thereof, and during such period any officer of Customs, any officer of any board of conservators acting within the area of the jurisdiction of such board, any officer of a market authority acting within the area of the jurisdiction of such authority, any officer appointed for that purpose in writing by the Board of Trade, and any officer appointed in writing by the Fishmongers Company at any place may open any package so consigned or sent or brought to any place to be so consigned or sent, and suspected to contain salmon trout or char, and if such package is found to contain salmon trout or char and is not marked in accordance with this section, or if there is reasonable cause to suspect that the salmon trout or char contained in any marked package is being dealt with contrary to law, may detain such package and the contents thereof until proof is given in

Short title.

Application of Act.

Consignment of salmon trout and char.

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manner provided by law that such salmon trout or char is not being so dealt with, and in like manner and under like conditions may detain any such salmon trout or char not packed in any package, and if before such proof is given any salmon trout or char detained under the provisions of this section becomes unfit for human food, may destroy the same. Any person offending against this section or refusing to allow any person acting under the authority thereof to exercise the powers conferred thereby, or obstructing any such person in the exercise of those powers, shall be liable for every such offence to a penalty not exceeding five pounds. Any package containing salmon trout or char, and not marked in accordance with this section, shall be forfeited, together with the contents thereof, on the conviction of the offender.

Legal proceedings.

4. Proceedings against a person contravening any of the provisions of the Salmon and Freshwater Fisheries Acts, 1861 to 1892, may be instituted before a Court of summary jurisdiction in any place in which the salmon trout or char in respect whereof the proceedings are taken may be found, and any salmon trout or char which may be forfeited upon the conviction of an offender shall be disposed of as the Court may direct.

Continuation of existing provisions.

5. Nothing in this Act shall be deemed to take away or repeal any provision of any existing Act of Parliament, but the provisions of this Act shall be in addition to all such provisions.

Definitions.

6. In this Act, unless there is something inconsistent in the context, the expressions hereinafter mentioned shall have the meanings hereby respectively assigned to them, that is to say ;

- (a) "Package" shall mean and include any box, basket, barrel, case, receptacle, sack, bag, wrapper, or other thing in which fish is placed for the purpose of carriage, consignment, or exportation ;
- (b) "Market authority" shall include any corporation or sanitary authority, or any body of trustees or undertakers having power to maintain or regulate any market ;
- (c) "Fishmongers Company" shall mean the wardens and commonalty of the Mystery of Fishmongers of the city of London ;
- (d) "Salmon trout and char" shall include part of any such fish respectively.

56 & 57 VICT. c. 17. 1893.

An Act to carry into effect an International Convention respecting the Liquor Traffic in the North Sea. [29th June, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The Convention set out in the schedule to this Act (hereinafter referred to as the scheduled Convention) is, with the Protocol thereto annexed, hereby confirmed, and the articles thereof shall be of the same force as if they were enacted in the body of this Act.

Confirmation
of Convention.

2. If within the North Sea limits but outside territorial waters any person on board or belonging to a British vessel supplies spirituous liquors to any person on board or belonging to a sea fishing boat he shall be liable—

Penalty for
supplying,
exchanging,
or otherwise
selling spirits.

(a.) if the liquors are supplied in exchange for any article not belonging to the person supplied, to a fine not exceeding fifty pounds, or, in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour ; and

(b.) if the liquors are sold otherwise than by way of exchange for any such article, to a fine not exceeding thirty pounds, or in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour.

3. If within the North Sea limits but outside territorial waters any person on board or belonging to a British sea-fishing boat purchases spirituous liquors, he shall be liable—

Penalty for
purchasing
spirits by
exchange or
otherwise.

(a.) if he gives any article not belonging to him in exchange for the liquors, to a fine not exceeding fifty pounds, or, in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour ; and

(b.) if he purchases the liquors otherwise than by way of exchange for any such article, to a fine not exceeding ten pounds.

4. If within the North Sea limits but outside territorial waters any person on board or belonging to a British vessel deals with any person on board or belonging to a sea-fishing boat in any provisions or other articles for his use, except spirituous liquors, without a licence granted in pursuance of Article three of the scheduled Convention, or without carrying on his vessel the mark agreed upon in pursuance of that Article, or in contravention of any conditions of a licence so granted, he shall be liable to a fine not exceeding twenty pounds, and his licence may be revoked.

Penalty for
breach of
licence.

5. Her Majesty the Queen may from time to time by Order in Council make regulations for any of the following purposes :

(a.) for prescribing the mode in which licences under Article three of the scheduled Convention are to be granted, renewed, and revoked ; and

(b.) for prescribing the mode of application for such licences, and the conditions under which, and the time for which, the licences are to be granted ; and

Power to
make regula-
tions as to
licences and
other matters.

(c.) generally for giving effect to any of the provisions of this Act or any of the articles of the scheduled Convention (*l*).

Enforcement
of Act.

46 & 47 Vict.
c. 22.

6. For the purpose of enforcing the provisions of this Act in the case of British and foreign vessels, whether within or beyond the North Sea limits, all British and foreign sea-fishery officers respectively within the meaning of the Sea Fisheries Act, 1883, shall have the same powers, and be entitled to the same protection, as they have and are entitled to for the purpose of enforcing the provisions of that Act in the case of British and foreign sea-fishing boats respectively.

Provided that in the case of a vessel not being either a sea-fishing boat or a vessel habitually employed in dealing with fishermen the power of a sea-fishery officer to take the vessel to any port shall not be exercised, unless the sea-fishery officer is satisfied that its exercise is necessary for the suppression of grave disorder.

Legal pro-
ceedings.

7. Sections sixteen, eighteen, nineteen, twenty, twenty-one, and twenty-two of the Sea Fisheries Act, 1883, shall apply in the case of offences, fines, and legal proceedings under this Act in the same manner as they apply in the case of offences, fines, and legal proceedings under that Act, and in those sections as so applied the expression "sea-fishing boat" shall include any vessel.

Evidence.

8. Section seventeen of the Sea Fisheries Act, 1883, shall apply in the case of any formal statement drawn up in pursuance of Article seven of the scheduled Convention in the same manner as it applies in the case of any document drawn up in pursuance of the Convention set out in the First Schedule to that Act.

Definitions.

9. In this Act—

The expression "North Sea limits" shall mean the limits of the North Sea as fixed by Article four of the Convention set out in the First Schedule to the Sea Fisheries Act, 1883.

The expression "territorial waters" shall mean the territorial waters of Her Majesty's dominions as defined by the Territorial Waters Jurisdiction Act, 1878.

The expression "sea-fishing boat" shall have the same meaning as in the Sea Fisheries Act, 1883.

The expression "vessel" shall include ship, boat, lighter, and craft of every kind, whether navigated by steam or otherwise.

The expression "spirituous liquors" shall include every liquid obtained by distillation and containing more than five per centum of alcohol.

Commence-
ment and
continuance
of Act.

10.—(1.) This Act shall come into force on such day as may be fixed by a notice in that behalf published in the London Gazette (*m*).

(*l*) Regulations as to granting renewal and revocation of licences were made by Order in Council April 30th, 1899 : Stat. Rules and Orders, 1894 (No. 121).

(*m*) The Act came into force on May 23rd, 1894 ; see notice of Board of Trade : Stat. Rules and Orders, 1894, p. 123.

(2.) The provisions of this Act, relating to the sea fishery officers of any foreign State bound by the Convention set out in the First Schedule to the Sea Fisheries Act, 1883, shall continue in operation notwithstanding the termination of the operation of that Convention as respects that foreign State.

(3.) So much of this Act as has effect outside territorial waters shall, if the scheduled Convention ceases to be binding on Her Majesty, cease to apply to the vessels and officers of any foreign State bound by the scheduled Convention, but, subject as aforesaid, this Act shall continue in force notwithstanding the determination of the scheduled Convention.

(4.) A notification in the London Gazette shall be sufficient evidence of the adhesion of any foreign State to the scheduled Convention, and of the application of this Act to the vessels and officers of any foreign States.

11. The North Sea Fisheries Act, 1888, is hereby repealed.

12. This Act may be cited as the North Sea Fisheries Act, 1893.

Repeal of
51 & 52 Vict.
c. 18.
Short title.

SCHEDULE.

CONVENTION RESPECTING THE LIQUOR TRAFFIC IN THE NORTH SEA.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, HIS Majesty the German Emperor, King of Prussia, in the name of the German Empire, HIS Majesty the King of the Belgians, HIS Majesty the King of Denmark, the President of the French Republic, and HIS Majesty the King of the Netherlands, having recognized the necessity of remedying the abuses arising from the traffic in spirituous liquors amongst the fishermen in the North Sea outside territorial waters, have resolved to conclude a Convention for this purpose, and have named as their Plenipotentiaries, that is to say :

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Sir William Stuart, Knight Commander of her Most Distinguished Order of St. Michael and St. George, and Companion of her Most Honourable Order of the Bath, her Envoy Extraordinary and Minister Plenipotentiary at the Hague :

HIS Majesty the German Emperor, King of Prussia, Baron Jean Antoine de Saurma-Feltsch, Chevalier of the second class of his Orders of the Red Eagle and of the Crown, &c., Privy Councillor of Legation, and Envoy Extraordinary and Minister Plenipotentiary at the Hague ;

HIS Majesty the King of the Belgians, Baron Auguste d'Anethan, Grand Officer of his Order of Leopold, Chevalier of the Order of the Netherlands Lion, Grand Cross of the Order of the Oaken Crown of Luxembourg, &c., his Envoy Extraordinary and Minister Plenipotentiary at the Hague, and M. Leopold Orban, Commander of his Order of Leopold, Commander of the Order of the Netherlands Lion, &c., his Envoy Extraordinary and Minister Plenipotentiary, Director-General of Political Affairs at the Ministry for Foreign Affairs at Brussels ;

His Majesty the King of Denmark, M. Corneille Marius Viruly, Chevalier of his Order of Dannebrog, Consul for Denmark ;

The President of the French Republic, M. Louis Désiré Legrand, Officer of the National Order of the Legion of Honour, Grand Cross of the Order of the Netherlands Lion, &c., Envoy Extraordinary and Minister Plenipotentiary of the French Republic at the Hague ;

His Majesty the King of the Netherlands, the Jonkheer Abraham Pierre Corneille van Karnebeek, Chevalier of his Order of the Netherlands Lion, &c., his Minister for Foreign Affairs, and M. Edouard Nicolas Rahusen, Chevalier of his Order of the Netherlands Lion, &c., President of the College of Marine Fisheries :

Who, after having communicated their full powers, found in good and due form, have agreed upon the following Articles :—

ARTICLE I.—The provisions of the present Convention shall apply to the North Sea, outside territorial waters, and within the limits fixed by Article IV. of the Convention of the Hague of the 6th May, 1882, respecting the police of the fisheries to every person on board a ship or boat of any one of the high contracting parties.

ARTICLE II.—The sale of spirituous liquors to persons on board or belonging to fishing boats is forbidden.

The purchase of those liquors by such persons is forbidden.

The exchange of spirituous liquors for any article, and especially for products of the fisheries, gear or equipments of fishing boats, or fishing implements, is forbidden.

Every liquid obtained by distillation, and containing more than five litres of alcohol per hectolitre, shall be considered a spirituous liquor.

ARTICLE III.—The liberty to deal with fishermen in provisions and other articles for their use (spirituous liquors excepted) shall be subject to a licence to be granted by the Government of the country to which the vessel belongs. This licence must specify the following amongst other conditions :—

1. The vessel may not have on board a quantity of spirits greater than what is deemed requisite for the consumption of her crew.

2. All exchange of the articles above indicated for products of the fisheries, gear, or equipments of fishing boats, or fishing implements, is forbidden.

Vessels provided with this licence must carry a special and uniform mark to be agreed upon by the high contracting Powers.

ARTICLE IV.—The high contracting parties engage to take, or to propose to their respective legislatures, the necessary measures for insuring the execution of the present Convention, and especially for punishing, by either fine or imprisonment, or by both, those who may contravene Articles II. and III.

ARTICLE V.—The tribunals competent to take cognizance of infractions of Articles II. and III. are those of the country to which the accused vessel belongs. If vessels of different nationalities should be implicated in the same infraction, the Powers to which such vessels belong will mutually communicate to each other the judgments given by the tribunals.

ARTICLE VI.—Prosecutions for infractions shall be instituted by the State, or in its name.

Infractions may be verified by all means of proof allowed by the legislation of the country of the Court concerned.

ARTICLE VII.—The superintendence shall be exercised by the cruisers of the high contracting parties which are charged with the police of the fisheries.

When the officers commanding these cruisers have reason to believe that an infraction of the measures provided for in the present Convention has been committed, they may require the captain or master to exhibit the official documents establishing the nationality of his vessel, and, where the case occurs, the licence. The fact of such documents having been exhibited shall then be indorsed upon them immediately.

Further, formal statements of the facts may be drawn up by the said officers, whatever may be the nationality of the accused vessel. These formal statements shall be drawn up according to the forms and in the language used in the country to which the officer belongs; they may be used as means of proof in the country where they are adduced, and conformably with the laws of that country. The accused and the witnesses shall be entitled to add or to have added thereto, in their own language, any explanations which they may think useful. These declarations must be duly signed.

Resistance to the directions of commanders of cruisers, or of those who act under their orders, shall, without taking into account the nationality of the cruisers, be considered as resistance to national authority.

The commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending vessel into a port of the nation to which she belongs.

ARTICLE VIII.—The proceedings in respect of infractions of the provisions of the present Convention shall always take place as summarily as the laws and regulations will permit.

ARTICLE IX.—The high contracting parties will communicate to each other, at the time of the exchange of ratifications, the laws which shall have been made in their respective countries in relation to the object of the present Convention.

ARTICLE X.—States which have not signed the present Convention may adhere to it on making a request to that effect. This adhesion shall be notified through the diplomatic channel to the Government of the Netherlands, and by the latter to the other signatory Powers.

ARTICLE XI.—The present Convention shall be brought into operation from and after a day to be agreed upon by the high contracting parties.

It shall remain in force for five years from that day, and, unless any of the high contracting parties shall, twelve months before the expiration of the said period of five years, have given notice of its intention to terminate its operations, it shall remain in force for one year longer, and so on from year to year.

If the Convention of the Hague of the 6th May, 1882, respecting the police of the fisheries, should cease to be in force, Article XXVI. of the same Convention shall continue to operate as regards the object of the present arrangement.

ARTICLE XII.—The present Convention shall be ratified; the ratifications shall be exchanged at the Hague as soon as possible, and, if practicable, within a year.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have thereto affixed their seals.

Done at the Hague, in six copies, the 16th November, 1887.

(L.S.) W. STUART.
 (L.S.) BARON SAURMA.
 (L.S.) BARON A. D'ANETHAN.
 (L.S.) LEOPOLD ORBAN.
 (L.S.) C. M. VIRULY.
 (L.S.) LOUIS LEGRAND.
 (L.S.) V. KARNEBEEK.
 (L.S.) E. N. RAHUSEN.

PROTOCOL.

Whereas it appears from the communications which have been received by the Government of the Netherlands that the Government of the French Republic is not at present in a position to proceed to the ratification of the Convention which was signed at the Hague on the 16th November, 1887, for remedying the abuses arising from the traffic in spirituous liquors amongst the fishermen in the North Sea outside territorial waters, the undersigned Plenipotentiaries of Great Britain, of Germany, of Belgium, of Denmark, and Minister for Foreign Affairs of the Kingdom of the Netherlands, having met in conference at the Ministry of Foreign Affairs at the Hague this 14th day of February, 1892, and being duly authorised to that effect, have agreed as follows:—

1. The above-mentioned Convention shall be brought into force by the other signatory Governments, namely, Great Britain, Germany, Belgium, Denmark, and the Netherlands, six weeks after they shall have exchanged the ratifications thereof.

2. The power of adhesion accorded by Article X. of the said Convention for non-signatory States is extended to France.

3. In modification of Article XI. of the Convention the periods of five years and twelve months are respectively reduced to one year and to three months.

4. The present Protocol, which shall be ratified at the same time as the Convention to which it refers, has been drawn up in five copies.

(Signed) HORACE RUMBOLD.
 „ K. DE RANTZAU.
 „ BARON D'ANETHAN.
 „ C. M. VIRULY
 „ W. TIENHOVEN.

57 & 58 VICT. c. 26, 1894.

An Act to extend the Powers of Local Fisheries Committees with respect to Fisheries for Shell Fish. [20th July, 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Extension of
powers of
local fisheries

1.—(1.) The powers of a local fisheries committee to make bye-laws in pursuance of section two of the Sea Fisheries Regulation Act,

1888, shall extend to making byelaws to be observed within their district for the regulation, protection, and development of fisheries for all or any specified kinds of shell fish, and any such byelaws may provide, among other things, for

committees
with respect
to shell fish.
51 & 52 Vict.
c. 54.

- a.) the fixing of the sizes and condition at which shell fish may not be removed (*n*) from a fishery, and the mode of determining such sizes ;
- (b.) the obligation to re-deposit in specified localities any shell fish the removal or possession of which is prohibited by or in pursuance of any Act of Parliament ;
- (c.) the protection of shell fish laid down for breeding purposes ;
- (d.) The protection of culch and other material for the reception of spat, that is to say, of the spawn or young of any kinds of shell fish ; and
- (e.) the obligation to re-deposit such culch and other material in specified localities.

(2.) A local fisheries committee shall have power to stock or re-stock any public fishery for shell fish, and for that purpose to incur such expenses as may be sanctioned by the Board of Trade.

200

(3.) For the purposes of this Act the expression "shell fish" shall include all kinds of molluscs and crustaceans.

2. This Act may be cited as the Sea Fisheries (Shell Fish) Regulation Act, 1894, and the Sea Fisheries Regulation Acts, 1888 and 1891, and this Act may be cited collectively as the Sea Fisheries Regulation Acts, 1888 to 1894.

Short title.
51 & 52 Vict.
c. 54.
54 & 55 Vict.
c. 37.

REGULATIONS FOR THE REGISTRY, LETTERING, AND NUMBERING OF
BRITISH SEA-FISHING BOATS, UNDER PART IV. OF THE MERCHANT
SHIPPING ACT, 1894, AND UNDER THE SEA FISHERIES ACTS, 1868
AND 1883, MADE BY ORDER IN COUNCIL, 24TH MARCH, 1902 : STAT.
RULES AND ORDERS, 1902, No. 274.

1.—(1.) These regulations shall apply to and be observed in the case of every British sea-fishing boat belonging to or hailing from any port or place in the British Islands, except—

- (a.) Yachts or pleasure boats not used for catching fish for profit ;
- (b.) Pilot boats, also used as fishing boats, and marked and numbered in accordance with a law or regulation requiring the same to be so marked and numbered ; and
- (c.) Open and undecked boats navigated by oars only, if such boats are otherwise marked in accordance with Section 176 of the Customs Consolidation Act, 1876. (The expression "undecked boats" shall mean boats not sufficiently decked to afford any sleeping accommodation.)
- (d.) Such boats employed in fishing and dredging for scientific purposes as may be exempted by the Board of Trade.

(*n*) The taking of shell fish from the bed in which they are found with the intention of taking them away altogether amounts to a removal of the shell fish from the fishery : *Thomson v. Burns*, (1897) 76 L. T. 58.

(2.) The boats hereby excepted shall be deemed to be exempted from the provisions of Section 373 of the Merchant Shipping Act, 1894.

(3.) The expression "boat," when hereafter used in these regulations, shall mean a boat to which these regulations apply.

2. The ports and places set forth in the first column of the First Schedule hereto shall be ports or places of registry for boats, and the letter or letters set forth in the second column of that schedule shall be the distinguishing letter or letters for those ports or places respectively.

3. The officers named in the fourth column of the First Schedule shall be the officers appointed to carry out the work of registration and the provisions of these regulations within the limits set forth in the fifth column, and are hereafter referred to as registrars.

4. A register in the form set forth in the Second Schedule hereto, or in such other form as may be prescribed from time to time by the Board of Trade, with a consecutive series of numbers, shall be kept at each port or place of registry.

5.—(1.) The owner of any boat shall make application to have such boat entered in the fishing boat register and shall obtain for every boat belonging to him a certificate of registry in accordance with these regulations.

(2.) The application shall be made in the form set forth in the Third Schedule hereto, and with the particulars therein indicated, or in such other form as may be prescribed from time to time by the Board of Trade, to the registrar of the port or place of registry to which the boat belongs or from which she hails or is for the time being employed or nearest thereto, or may be made in duplicate in like form and with like particulars to the officer of coast guard or Customs in charge of the nearest station, and in Scotland may also be made in duplicate in like form and with like particulars to any officer of the Fishery Board for Scotland. Any such officer other than the registrar, receiving the application shall forthwith forward one copy of the same to the registrar and shall retain and file the other copy.

(3.) The registrar on the receipt of the application and having no reason to doubt the correctness of the particulars contained therein shall cause the boat to be registered and shall appoint a number for the boat, and shall issue the certificate of registry to the applicant. The certificate shall be in the form set forth in the Fourth Schedule hereto, or in such other form as may be prescribed from time to time by the Board of Trade, and the letter or letters to be inserted in the certificate shall be the distinguishing letter or letters of the port or place of registry.

(4.) A certificate issued under these regulations shall be a certificate of registry or official paper within the meaning of the Sea Fisheries Act, 1868, and Part IV. of the Merchant Shipping Act, 1894, and an official document within the meaning of the Sea Fisheries Act, 1883, and as such must at all times be carried on board the boat. Provided that the Board of Trade shall have power to exempt from this requirement boats of any class or boats engaged in any class of fishing.

6. When any boat has not already a port of registry and a port to which she belongs by reason of her registry under Part I. of the Merchant Shipping Act, 1894, the port or place at which that boat is registered under these regulations shall be deemed to be the port or place to which she belongs. But boats belonging to any Customs port by reason of their

registry under Part I. of the Act must be registered as fishing boats at the same port of registry by the officer of Customs.

7. For the purposes of these regulations boats shall be divided into three classes, namely :—

1st Class, which shall include all steamers of 15 tons gross tonnage and upwards, and all boats (other than steamers) of 15 tons register tonnage and upwards.

2nd Class, which shall include all steamers of less than 15 tons gross tonnage and all boats (other than steamers) of less than 15 tons register tonnage or of 18 feet keel and upwards.

3rd Class, which shall include all boats under 18 feet keel, other than those navigated by oars only and marked in accordance with Section 176 of the Customs Consolidation Act, 1876 *o*).

Provided that in the case of canoes or other boats built without keels the measurement shall be made from stem to stern over all.

8.—(1.) At least once in every year, and in any case immediately upon a change of skipper, the owner of any boat shall submit the certificate of registry of his boat for examination to a registrar or other officer empowered by these regulations to receive applications for registry, and shall report the change of skipper, if any, and also any alteration respecting the boat or her employment. Any owner who fails to submit the certificate or to report in accordance with this regulation shall be liable to a fine not exceeding five pounds.

(2.) The officer to whom the certificate is submitted shall endorse on the certificate his name and the date of examination, and in the case of a change of skipper shall endorse the change, and shall at the same time make a record of the facts in such form as the Board of Trade may prescribe. If he is not the registrar he shall report the examination to the registrar of the port or place, and in the case of any change being reported respecting the boat, he shall forward the certificate of registry to the registrar for correction. The registrar shall forthwith make such alterations as may be necessary in the register and certificate of registry.

9.—(1.) A report respecting any entry made in the register shall, except so far as it relates to a change of owner or skipper, be forwarded to the Registrar-General of Shipping and Seamen, who shall by these means maintain a central register.

(2.) The registrar shall also forward annually to the Registrar-General a list of all the boats which have appeared on the register during the preceding year.

10. After registration no change shall be made in the name of any boat unless the Board of Trade are satisfied that the application for such change of name is made on reasonable and sufficient grounds, and direct that the name may be changed. In the event of any such direction being given, the name of the boat may be changed and the register and certificate altered accordingly. In all cases of change of name the former name shall appear in the register and on the certificate.

11.—(1.) On a change of ownership of any registered boat—

(a.) The new owner shall make application for the registry of the boat in the manner prescribed by these regulations.

(a) The Customs Consolidation Act, 1876, s. 176, requires all vessels and boats under 100 tons to have the name of the owner and of the port painted outside the stern, but this does not apply to boats registered as fishing boats.

(b.) The previous owner shall deliver up the certificate of registry to the registrar of the port or place of registry, and the registrar shall thereupon cancel the certificate, and note the cancellation in the register against the registry of the boat.

(2.) Any person who fails without reasonable cause, proof whereof shall lie on him, to deliver up to the registrar the certificate of a boat on his ceasing to be the owner thereof, or account for the same to the satisfaction of the registrar, shall be liable to a fine not exceeding five pounds.

12. On the transfer of any boat to another port or place of registry, the owner of such boat may apply in writing to the registrar of the port or place to which the boat belongs to transfer the registry of the boat from that port or place to the new port or place of registry, and shall deliver up the existing certificate of registry for cancellation, or account for the same to the satisfaction of the registrar, and the registrar shall transmit the application, together with all necessary particulars relating to the boat, to the registrar of the port or place at which it is desired that the boat should be registered, and the last-named registrar shall thereupon enter the boat in the register of his port or place, and shall grant a fresh certificate of registry, and the previous registry shall cease to have effect.

13.—(1.) In the event of a registered boat being either actually or constructively lost, burnt, or broken up, or ceasing to be a British sea-fishing boat, the owner of the boat shall immediately give notice thereof to the registrar of the port or place of registry, and shall deliver up to the registrar the certificate of registry, or account for the same to the satisfaction of the registrar. The registrar shall thereupon cancel the certificate, and note the cancellation in the register against the registry of the boat.

(2.) Any owner who fails without reasonable cause, proof whereof shall lie on him, to give notice in accordance with this regulation, or to deliver up or account for the certificate shall be liable to a fine not exceeding five pounds.

(3.) If from any representation made by the owner or otherwise, the Board of Trade are satisfied that any boat has ceased to exist as a British sea-fishing boat, although the owner may have omitted or been unable to give notice of the same as required, they may direct that the register of such boat shall be cancelled.

(4.) The provisions of this and the two preceding regulations so far as they refer to the cancellation of registry or to a boat ceasing to be a British sea-fishing boat shall not apply to boats as to which there is an existing registration under the provisions of the Sea-Fishing Boats (Scotland) Act, 1886.

14. When the owner of a boat applies to and proves to the satisfaction of the registrar of the port or place of registry that the certificate of registry of the boat has been mislaid, lost, or destroyed, the registrar may upon payment of a fee of one shilling grant to the owner a copy of the certificate of registry of the boat certified under his hand to be a true copy, and that copy shall have all the effect of the original.

15. The name of each boat and that of the port or place of registry shall be painted in white oil colour on a black ground outside the stern of the boat in letters which shall be not less than three inches in height and half an inch in breadth.

16. Every boat shall bear in the following manner the letter or letters and the number assigned to the boat in her register.

- (a.) The letters shall precede the number.
- (b.) The letters and number shall be placed on each bow of the boat three or four inches below the gunwale and so as to be clearly visible.
- (c.) In the case of steamers, the letters and number shall, in addition, be placed in a similar manner on each quarter and on the funnel twelve inches from the top, of a conspicuous size, and as far as possible on the foremost half of the circumference.
- (d.) The letters and number shall be painted in white oil colour on a black ground.

17.—(1.) The same letters and number shall be painted in oil colour on each side of the centre cloth or cloths of the mainsail of the boat immediately above the close reef, and in such a manner as to be plainly visible. They shall be painted on white sails in black, and on black sails in white, and where the sails are of an intermediate shade, the said letters and number shall be painted in black on sails of light shade, and in white on sails of dark shade.

(2.) Provided that in the case of a lug sail boat the letters and number shall be placed on the sail which is commonly used when the boat is engaged in fishing.

(3.) Whenever the registrar of the port, or place of registry, reports to the Board of Trade that he is in doubt as to the effectiveness for the purposes of these regulations of the colour of the letters and number in the case of a boat having any sail of intermediate shade, or whenever any question arises as to the effectiveness for the purposes of these regulations of the colour of the letters and number for any sail of intermediate shade, the letters and number shall be painted in black or in white as the Board of Trade may in each case direct.

18.—(1.) For boats of the first class the letters and numbers shall be, on the hulls, 18 inches in height and $2\frac{1}{2}$ inches in breadth, and, on the sails, one-third larger every way.

(2.) For boats of the second class the letters and numbers shall be, on the hulls, 10 inches in height and $1\frac{3}{4}$ inches in breadth, and, on the sails, one-third larger every way.

(3.) For boats of the third class, the letters and numbers shall be, on the hulls, 6 inches at least in height and $\frac{3}{4}$ inch at least in breadth, and on the sails, one-third larger every way.

(4.) Provided that in boats which have a "bend piece" or "rubbing streak" the letters and numbers shall be as high as the space above it will admit. In boats where the space between the gunwale and water-line is not sufficient for the prescribed height, the letters and numbers shall be as high as the space will admit.

(5.) In all cases, a space equal to one-third of the height of the letters shall be left between every two letters and every two figures forming the number, and the letters shall be separated from the number by twice the same space.

19.—(1.) The names, letters and numbers herein prescribed shall at all times be effectively kept up and renewed when required and a boat shall not have either on its outside or on its sails any name, letter, or number other than those herein prescribed.

(2.) Provided that in the case of any boat only temporarily engaged in fishing for purposes of sale, so much of these regulations as requires that letters and numbers shall be permanently affixed to the hull and sails or funnels shall not apply if such letters and numbers are temporarily affixed thereto during the whole period of fishing by means of board, canvas or iron in a manner otherwise according with these regulations.

20.—(1.) If any boat is not marked with name, letters and number in accordance with these regulations, the owner and the skipper of the boat shall each be liable to a fine not exceeding twenty pounds.

(2.) If any person effaces, alters, makes illegible, covers or conceals in any manner whatsoever the names, letters or numbers, or is a party or privy to so doing, he shall be liable to a fine not exceeding twenty pounds.

21.—(1.) All small boats carried by, or attached to, sea-fishing boats, as tenders or otherwise, and all the buoys, barrels, and principal floats, all other fishing implements, and all grapnels and anchors shall be marked with the same letters and numbers as the boats to which they belong, so as to be easily distinguished. The owners of any small boats, buoys, barrels, floats, implements, grapnels or anchors may further distinguish them by any private marks they think proper.

(2.) Provided that in the case of fishing implements belonging to fishermen who are not the owners of the boat in which they are engaged in fishing, it shall be held sufficient if such implements are marked so as to identify the true owners. It shall lie upon the fishermen to satisfy any sea-fishery officer that the implements properly form part of the fishing gear in use on the boats with which they may be found.

(3.) The owner and the skipper of any boat not having the small boat, or the implements used in connection with his boats, duly marked in the manner herein directed, shall each be liable to a fine not exceeding five pounds.

22. The ports and places set forth in the first column of the Fifth Schedule hereto shall henceforth cease to be ports or places of registry for sea-fishing boats, and the register of boats kept at these places respectively shall be delivered into the custody of the registrar of the port or place named in the second column of the said schedule, and no further entries shall be made therein, except such as relate to existing registers. All entries made by the registrar to whose custody the register is delivered shall have the same effect as if made by the registrar of the port or place from which the register is transferred.

23. These regulations shall come into operation on the first day of May, 1902.

24.—(1.) The provisions of the Orders in Council mentioned in the Sixth Schedule hereto are hereby revoked to the extent specified in the last column of that schedule, provided that the revocation shall not affect anything done or suffered under any of the provisions so revoked.

(2.) Provided that any registry naming, lettering, or numbering of a sea-fishing boat already effected in accordance with any regulation contained in the Orders in Council hereby revoked, although not in accordance with these regulations, shall, so long as the prescribed marks on the boat are duly maintained, be deemed sufficient in the case of that boat until the boat is required by these regulations to be registered again.

UNDER THIS ORDER THE FOLLOWING ARE THE PORTS
AND PLACES OF REGISTRY FOR ENGLAND, WITH THEIR
DISTINGUISHING LETTERS.

| Ports and Places of Registry. | Dis- tinguishing Letters. | Ports and Places of Registry. | Dis- tinguishing Letters. |
|-------------------------------|---------------------------------|-------------------------------|---------------------------------|
| Aberystwith | A.B. | Lynn | L.N. |
| Barnstaple | B.E. | Maldon | M.N. |
| Barrow | B.W. | Manchester | M.R. |
| Beaumaris | B.S. | Maryport | M.T. |
| Berwick-on-Tweed | B.K. | Middlesbrough | M.H. |
| Bideford | B.D. | Milford | M. |
| Blyth | B.H. | Newcastle | N.E. |
| Boston | B.N. | Newhaven | N.N. |
| Bridgewater | B.R. | Newport, Mon. | N.T. |
| Bristol | B.L. | Padstow | P.W. |
| Brixham | B.M. | Penzance | P.Z. |
| Cardiff | C.F. | Plymouth | P.H. |
| Cardigan | C.A. | Poole | P.E. |
| Carlisle | C.L. | Portsmouth | P. |
| Carnarvon | C.O. | Preston | P.N. |
| Chester | C.H. | Ramsgate | R. |
| Colchester | C.K. | Rochester | R.R. |
| Cowes | C.S. | Runcorn | R.N. |
| Dartmouth | D.H. | Rye | R.X. |
| Dover | D.R. | Salcombe | S.E. |
| Exeter | E. | St. Ives | S.S. |
| Falmouth | F.H. | Scarborough | S.H. |
| Faversham | F. | Seilly | S.C. |
| Fleetwood | F.D. | Shields, North | S.N. |
| Folkestone | F.E. | Shields, South | S.S.S. |
| Fowey | F.Y. | Shorcham | S.M. |
| Gloucester | G.R. | Southampton | S.U. |
| Goole | G.E. | Stockton | S.T. |
| Grimsby | G.Y. | Sunderland | S.D. |
| Hartlepool, West | H.L. | Swansea | S.A. |
| Harwich | H.H. | Teignmouth | T.H. |
| Hull | H. | Truro | T.O. |
| Ipswich | I.H. | Weymouth | W.H. |
| Lancaster | L.R. | Whitby | W.Y. |
| Littlehampton | L.I. | Whitehaven | W.A. |
| Liverpool | L.L. | Wisbeach | W.I. |
| Llanelly | L.A. | Workington | W.O. |
| London | L.O. | Yarmouth (Norfolk). | Y.H. |
| Lowestoft | L.T. | | |

CERTIFICATE OF REGISTRY OF A BRITISH SEA-FISHING BOAT.

*Under Part IV. of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60,
s. 373).*

Name of Boat _____

Class _____ Letters _____ Number _____

Port or Place of Registry _____ Place (Town or
Village) to which
Boat belongs. _____)

Description of Boat { Sailing or Steam
How rigged
What Sail used, &c.

Mode of Fishing _____

SEA FISHERIES DISTRICTS.

| | | | | | | | |
|---|---|---------|-------|---------|----------------------|---------|---------|
| Principal Dimensions | { | Length | Feet. | Tenths. | Length of Keel | Feet. | Tenths. |
| | | Breadth | | | | Gross. | Net. |
| | | Depth | | | | Tonnage | |
| Owner | | | | | Skipper | | |
| If registered under Part I. of the Merchant Shipping Act, 1894. | | | | | Port of Registry | --- | |
| | | | | | Official Number | | |
| | | | | | Port Number and Year | --- | |
| Signature of Registrar | | | | | --- | | |
| Date | | | | | --- | | |

LIST OF SEA FISHERIES DISTRICTS AND OF BOARDS OF
CONSERVATORS AND HARBOUR AUTHORITIES HAVING
THE POWERS OF A LOCAL FISHERIES COMMITTEE.

| Name and Limits of Districts. | Date of Order. | Reference to Parlia- mentary Paper in which Order is Published. | |
|--|----------------|--|---------------------|
| | | Session. | Number of Paper. |
| Cornwall (Rame Head to northern boundary of Cornwall). | Mar. 28, 1890 | 1890 | 114 |
| Cumberland (Haverigg Point to Sark Foot). | Feb. 21, 1895 | 1895 | 587 |
| Devon (southern section: east boundary of Devon to Rame Head; northern portion west boundary to east boundary of Devon). | Mar. 31, 1892 | 1892 | 132 |
| Glamorgan (Nash Point to Worms Head) | July 8, 1890 | 1890 | 290 |
| Kent and Essex (Dovercourt to Dungeness) | May 5, 1890 | 1890 | 159 |
| Lancashire and Western (Cemmaes Head to Haverigg Point). | July 8, 1890 | 1890 | 289 |
| | April 7, 1891 | 1891 | 172 |
| | Feb. 2, 1900 | 1900 | 292 |
| Milford Haven (Worms Head to Cemmaes Head). | Mar. 22, 1892 | 1892 | 124 |
| North-Eastern (River Tyne to Donna Nook Beacon) (p). | July 9, 1890 | 1890 | 296 |
| Northumberland (the boundary between England and Scotland to the River Tyne) | Mar. 20, 1890 | 1890 | 105 |
| Southampton Harbour Board | Aug. 26, 1889 | 1889 | c. 5887 |
| Colchester Town Council | Aug. 25, 1890 | 1890 | c. 6226 |
| Eastern (Donna Nook Beacon to Happis- burgh). | Nov. 7, 1893 | 1893 | 439 |
| Southern (Hayling Island to western bound- ary of Dorset). | June 7, 1893 | 1893 | 247 |
| Sussex (Dungeness to Hayling) | Feb. 15, 1893 | 1893 | 75 |

(p) Amended by resolution of the House of Commons, Aug. 2, 1890.

ORDERS OF THE BOARD OF TRADE CREATING OYSTER,
MUSSEL, AND COCKLE FISHERIES.

| Name of Fishery Order. | Reference to Act or Order in Council confirming Order. | Date of Certificate determining Order. |
|--|--|--|
| Blackwater, Essex Oyster Fishery, 1868. | 31 & 32 Vict. c. ix | June 18, 1891. |
| Bosham Fishery, 1873 | 36 & 37 Vict. c. lxii. | |
| Boston Deep's Fishery, 1870 | 33 & 34 Vict. c. vi. | |
| Boston Fishery, 1897 | Ord. in C., 26 Feb., 1897 | |
| Emsworth Fishery, 1870 | 33 & 34 Vict. c. vi. | |
| Emsworth Channel Fishery, 1871 | 34 & 35 Vict. c. cxlv. | |
| Falmouth Fishery, 1877 | 40 & 41 Vict. c. cxxvi. | |
| Hamford Water Fishery, 1882 | 46 & 47 Vict. c. x. | |
| Langston Fishery, 1869 | 32 & 33 Vict. c. 31 | Sept. 12, 1888. |
| Le Strange Fishery, 1882 | 46 & 47 Vict. c. x. | |
| Lynn Deep's Fishery, 1872 | 35 & 36 Vict. c. i. | |
| Menai Straits Fishery, 1874 | 37 & 38 Vict. c. xviii. | July 22, 1876. |
| Paglesham Fishery, 1874 | 37 & 38 Vict. c. xviii. | |
| Poole Fishery, 1885 | 48 & 49 Vict. c. xii. | |
| Poole (Wareham Channel) Fishery, 1887. | 50 & 51 Vict. c. c. | May 23, 1898. |
| Ramsholt Fishery, 1884 | 47 & 48 Vict. c. xiii. | Feb. 10, 1899. |
| Salcombe River Fishery, 1872 | 35 & 36 Vict. c. lxiii. | Aug. 1, 1876. |
| Swansea Fishery, 1871 | 34 & 35 Vict. c. cxlv. | |
| Amended, 1883 | 46 & 47 Vict. c. x. | |
| Amended, 1892 | Order in Council. | Mar. 16, 1892. |
| Tollesbury & Mersea (Blackwater) Fishery, 1878. | 42 & 43 Vict. c. i. | |
| Truro Port Fishery, 1876 | 39 & 40 Vict. c. xci. | |

LIST OF THE SALMON AND FRESHWATER FISHERIES
DISTRICTS.

The following is a list of the certificates constituting and altering fishery districts under the Salmon and Freshwater Fisheries Acts, 1861 and 1892.

| Name of Fishery District. | Date of Certificate |
|-------------------------------|--|
| Adur | Nov. 17, 1897. |
| Avon, Devon | Mar. 26, 1866 ; Feb. 3, 1891. |
| Avon, Brue and Parret | Mar. 27, 1867. |
| Avon and Stour | Mar. 26, 1866. |
| Axe | Mar. 26, 1866 ; June 15, 1895. |
| Ayrton | Oct. 20, 1882. |
| Camel | Sept. 4, 1866 ; March 1, 1890. |
| Cledly | July 30, 1866 ; June 16, 1877. |
| Conway | Jan. 18, 1866 ; Nov. 8, 1890. |
| Coquet | Jan. 18, 1866 ; Dec. 22, 1869. |
| Cuckmere | Nov. 16, 1894. |
| Dart | Mar. 26, 1866 ; Feb. 3, 1891. |
| Dee | Jan. 18, 1866 ; July 4, 1866 ; Nov. 8, 1890. |
| Derwent | Mar. 29, 1880. |
| Dovey | Jan. 18, 1866. |
| Dwyfach | Dec. 17, 1873. |
| Eden | Sept. 4, 1869 ; Aug. 6, 1890. |
| Elwy and Clwyd | Jan. 18, 1866 ; Nov. 8, 1890. |
| Esk, Yorks. . . . | June 8, 1875. |
| Exe | Mar. 26, 1866. |
| Fowey | Sept. 4, 1866 ; Mar. 1, 1890. |
| Fronie | July 4, 1866. |

LIST OF SALMON AND FRESHWATER FISHERIES—*continued*.

| Name of Fishery District. | Date of Certificate. |
|--|---|
| Kent, &c. | Mar. 22, 1867 ; Dec. 23, 1890. |
| Lune | Jan. 18, 1866. |
| Norfolk and Suffolk (<i>q</i>) | Oct. 27, 1887. |
| Ogmore | Mar. 28, 1874. |
| Otter | Mar. 26, 1866. |
| Ouse, Sussex | Dec. 27, 1875. |
| Ouse and Nene | July 15, 1866. |
| Rhymney | Oct. 21, 1871. |
| Ribble | Jan. 18, 1866 ; Sept. 5, 1890. |
| Rother | Jan. 14, 1872. |
| Seiont, &c. | Mar. 3, 1867 ; May 28, 1875. |
| Severn | Jan. 18, 1866 ; Sept. 26, 1866 ; Feb. 4, 1867 ; Sept. 2, 1882 ; Dec. 9, 1895. |
| Stour, Canterbury | Mar. 26, 1866. |
| Suffolk and Essex (<i>r</i>) | Sept. 23, 1891 ; Dec. 8, 1896 ; Mar. 8, 1897. |
| Taff and Ely | Sept. 2, 1875. |
| Tamar and Plym | Mar. 26, 1866 ; Feb. 3, 1891. |
| Taw and Torridge | Mar. 26, 1866. |
| Tees | Jan. 18, 1866 ; June 29, 1889. |
| Teify | July 4, 1866 ; June 16, 1877 ; Oct. 20, 1882. |
| Teign | Mar. 26, 1866 ; Feb. 3, 1891. |
| Towy, Loughor and Taf | Mar. 26, 1866 ; Jan. 4, 1879. |
| Trent | Jan. 18, 1866 ; July 16, 1868 ; April 23, 1874 ; Sept. 21, 1892. |
| Tyne | May 1, 1866 ; Dec. 22, 1869. |
| Usk and Ebbw | Jan. 18, 1866 ; April 6, 1894. |
| Wear | Feb. 28, 1879. |
| Welland | May 20, 1886. |
| West Cumberland | July 16, 1879. |
| Witham | May 20, 1886. |
| Wye | Jan. 18, 1866 ; Dec. 17, 1866 ; Feb. 18, 1869 ; Dec. 9, 1895. |
| Yorkshire | Jan. 18, 1866 ; Dec. 31, 1866 ; July 16, 1868 ; Feb. 5, 1873 ; April 23, 1874 ; Jan. 21, 1896. |

FISHERIES REFERRED TO IN DOMESDAY BOOK.

[*The figures refer to the pages of Domesday.—In the places marked * the water is tidal.*]

BEDFORDSHIRE.

| | |
|-------------------------|-------------------|
| Bichelesuorde, f. 210. | Stotfalt, 213. |
| Bereford, 210 b. 214 b. | Bruncham, 213 b. |
| Etone, 212. | Rochesdone, 215. |
| Stanford, 212 b. | Achelle, 215. |
| Clistone, 212 b. | Wadhelle, 215 b. |
| Putenhou, 212 b. | Sharmbroc, 216 b. |
| Chainhalle, 212 b. | Harewell, 217. |
| Goldentone, 212 b. | Bruncham, 217. |
| Welitone, 213. | |

BERKSHIRE.

| | |
|-----------------|------------------|
| Windsor, 56 b. | Selingfelle, 57. |
| Cookham, 56 b. | Feredone, 57 b. |
| Wargrave, 57. | Herlei, 57. |
| Soanesfelt, 57. | Ordia, 58. |

(*q*) Norfolk and Suffolk Fishery Act, 1877 ; Fisheries (Norfolk and Suffolk) Act, 1896.

(*r*) Powers of Local Fisheries Committee conferred on Board of Conservators, Parl. Paper, 1893 [c. 6883].

BERKSHIRE—*continued*.

| | |
|---------------------|----------------------|
| Redinges, 58. | Barlei, 60 b. |
| Heldremaunstun, 58. | Chingestun, 61. |
| Soninges, 58. | Sudcote, 61. |
| Bocheland, 58. | Etone, 61. |
| Comenore, 58 b. | Apletune, 61 b. |
| Bertune, 58 b. | Eltune, 61 b. |
| Sipene, 58 b. | Herlei, 62. |
| Apleford, 59. | Estralei, 62. |
| Wiselei, 59. | Herlei, 62. |
| Ordun, 59. | Borgefel, 62 b. |
| Bocheland, 59 b. | Witelei, 63. |
| Reddinges, 60. | Hentone, 63 b. |
| Barwardescote, 60. | Dudockesforde, 63 b. |
| Borghfelle, 60 b. | Cherswelle, 63 b. |

BUCKINGHAMSHIRE.

| | |
|-------------------|--------------------|
| Opetone, 143 b. | Hevresham, 148. |
| Wicunbe, 143 d. | Evreham, 149. |
| Waborne, 144. | Medmenham, 150 b. |
| Thapleslaw, 144. | Ettone, 151. |
| Berlaw, 144 b. | Dacete, 152 b. |
| Olnei, 145 b. | Merlawe, 152 b. |
| Lavendune, 145 b. | Hanbledene, 152 b. |
| Daneham, 145 b. | Cliftone, 152 b. |
| Cavrefelle, 148. | |

CAMBRIDGESHIRE.

| | |
|-------------------|--------------------|
| Saham, 189. | Gretone, 192 b. |
| Gisleham, 189 b. | Witesie, 192 b. |
| Cesterton, 189 b. | Coteham, 192 b. |
| Witesei, 191 b. | Wisbeche, 193. |
| Dodington, 191 b. | Svarwy, 194. |
| Cetriz, 191 b. | Bece, 195. |
| Litelpot, 191 b. | Esshelinge, 195 b. |
| Stunteni, 191 b. | Saham, 195 b. |
| Lindone, 192. | Wicham, 195 b. |
| Wiscbece, 192. | Bodichessham, 196. |
| Ely, 192. | Swafham, 196. |
| Dunham, 192. | Chipeham, 197. |
| Sudtone, 192. | Trumpington, 200. |
| Wisbece, 192. | Grentesete, 202. |
| Saham, 192. | Chertelinge, 202. |

CHESHIRE.

| | |
|-----------------|-----------------------------|
| Eetune, 263. | *Heletune, 266. |
| Cavelen, 263. | *Westone, 266. |
| Hunditone, 263. | *Estune, 266. |
| Etune, 263 b. | *Norton, 266. |
| *Stanei, 264. | Ferentone, 266 b. |
| Lestone, 264. | Etune et Sutune, 266 b. |
| *Gaitone, 264. | Blachehol, 267. |
| Survelee, 265. | Roelent in Englefield, 269. |
| *Salhale, 265. | Widford and Puteain, 269. |

DERBYSHIRE.

| | |
|------------------------------------|-------------|
| Westune, 273. | Derby, 280. |
| Salle, Draicot and Openwelle, 273. | |

DEVONSHIRE.

| | |
|--------------------|--------------------|
| Axeminstre, 100. | Odeford, 110. |
| *Bideforde, 101. | Hacombe, 110. |
| Aisbertone, 101 b. | Bighelic, 111 b. |
| *Nertham, 102. | Bochelande, 111 b. |
| Hantone, 106 b. | Eleforde, 113 b. |
| Lodeswille, 108. | Were, 115. |
| *Corneorde, 109. | Holcomb, 115 b. |

DORSETSHIRE.

| | |
|----------------|------------------|
| Tarente, 77 b. | Brige, 83, 85 b. |
|----------------|------------------|

ESSEX.

- *Benflet, 4.
- *Sutheercam, 8.
- *Clackintuna, 11
- Toteham, 11.
- *Turruca, 11.
- Hornmundune, 12.
- *Celdeuella, 12.
- Tillingham, 13.
- Nasing, 16.
- *Mucinga, 17.
- *Tolesberia, 18.
- Atahou, 20.
- Effecestra, 21.
- *Merescia, 22.
- Hacflet, 24.
- *Phobinge, 26.
- *Tilleberiam, 42
- *Mereseia, 46.
- Uveseia, 56.
- *Turruc, 63.
- Chingefort, 64.
- Wimondfort, 66.
- Springinghefelde, 67.
- Adem, 70.
- Legra, 75.
- Leintuna, 85
- Turruc, 70.
- Seiddinchou, 91.
- Wilcumstou, 92.
- Hornindune, 93.

GLOUCESTERSHIRE.

- *Strigoil, 162.
- Teodeshesberie, 163.
- Nest Pontune et Peritone, 164.
- *Tidenham, 164.
- *Hechamstede, 164.
- Modiete, 164.
- Stanedis, 164 b.
- *Gloucester, 165.
- Wighiete, 166 b.
- Odalveston, 166 b.
- *Tideham, 166 b.
- Lidenai, 167.
- Bernintone, 167.
- Modiete, 167 b.
- *Tideham, 167 b.
- Lechelade, 169.
- *Langenei, 170 b.

HAMPSHIRE.

- Staneude, 38 b.
- Edlinges, 38 b.
- Holecest, 39.
- Houstun, 40 b.
- *South Stanham, 41 b.
- Helingey, 43 b.
- Middeltune, 43 b.
- Croftone, 44.
- Neutibrige, 44 b.
- Effele, 45 b.
- Chenap, 46.
- Otterburne, 46 b.
- Sirelei, 46 b.
- *Porcestre, 47 b.
- *Depedene, 51 b.
- *Southampton, 52.
- Prestetone, 53.

HEREFORDSHIRE.

- Merchelai, 179 b.
- Turlestone, 179 b.
- Clive, 179 b.
- Forne Bradefeld and Surnesfeld,
- 180.
- Leominstre, 180.
- Bradeford, 180.
- Merlie, 180 b.
- Suchelie, 180 b.
- Hulla, 181.
- Wiboldingtune, 182.
- Dunre, 183.
- Duntune, 183 b.
- Acle, 184.
- Ewias, 186.
- Hope, 189.

HERTFORDSHIRE.

- Eia, 134 b.
- St. Albans, 135 b.
- Prichemansworde, 136.
- Hemelhampstede, 136 b.
- Cestrehunt, 137.
- Hodesdone, 137.
- Wermelai, 137.
- Hodesdone, 137 b.
- Ware, 138 b.
- Odesdone, 139.
- Hodesdone, 139 b.
- Hailet, 140.

HUNTINGDONSHIRE.

- Huntingdon, 203.
- Sumeresham, 204.
- Witlesemere, 205.
- Alwoltune, 205.
- Sutham, 206 b.
- Emingeforde, 207..

KENT.

- Romney (?), 2.
- *Middelton, 2 d.
- *Northflect, 3.
- Maidstone, 3.
- *Roculf, 3 d.
- Bolton, 3 d.
- Fletes, 3 d.
- Aldintone, 4.
- Leminges, 4.
- Elesford, 4.
- Ferlega, 4 b.
- *Monocestone, 4 b..
- *Sesaltre, 5.
- Prestetone, 5.

KENT—*continued*.

| | |
|---------------------|-------------------|
| *Apeldore, 5. | Ore, 10. |
| Estanes, 5 b. | Norton, 10. |
| Oldham, 5 b. | Cilleham, 10. |
| *Swanscomb, 6. | Ospringe, 10. |
| *Lesnes, 6 b. | Badlesmere, 10. |
| Lasela, 6 b. | Dodeham, 10 b. |
| Beeling, 7 b. | Palestrei, 10 b. |
| Haslow, 7 b. | Bilsintone, 10 b. |
| *Ceteham, 8 b. | Affetune, 10 b. |
| *Stokes, 8 b. | Titentone, 11. |
| *Hoo, 8 b. | Esturai, 12. |
| Pinpa. | Tanet, 12. |
| Nedestede, 8 b. | Estbrige, 13. |
| *Otringeberge, 8 b. | Titendone, 13. |
| *Hecham, 9. | Hallinges, 14. |
| Borne, 9. | Marounde, 14. |
| Burnes, 9. | Blehem, 14. |
| Wicheham, 9. | Newetone, 14 b. |
| Berham, 9 b. | |

LEICESTERSHIRE.

No fishery is mentioned as such; but there are many returns of eel-rents, which were the usual rents for fisheries.

LANCASHIRE.

The fisheries were all part of the manor of West Derby, the tenants of which were bound to repair them: f. 269 b.

LINCOLNSHIRE.

| | |
|-------------------------------|----------------------|
| *Torchesey, 327. | *Wintringham, 354 b. |
| Chine, 327 b. | Bardnai, 354 b. |
| *Gadenai, 338. | Sutere, 354 b. |
| *Fleot, 338. | Hechintune, 355. |
| Cuningisbi, 339. | Northchime, 357 b. |
| Belingei, 340. | Brune, 358 b. |
| Torp, 341. | Torp, 359 b. |
| Torp, 343. | Torp, 360. |
| Canvic, 343 b. | Brantzune, 361. |
| Scotere, 345 b. | Ulvesbi, 363. |
| Lea, 347. | Steveninge, 363. |
| Draitone, 348. | Rocstune, 363 b. |
| Cuningesbi, 349 b. | Brune, 364 b. |
| Hermodestuna, 349 b. | Est Depeinge, 364. |
| Gamelstorp, 350 b. | Brune, 368 b. |
| Saxebi, 350 b. | *Epworde, 369. |
| Brune, 351 b. | *Acheseia, 369. |
| Barcuurde et Sutrei, 352. | Lund, 369. |
| Lastone, 352. | Belton, 369. |
| Canevic et Brageburge, 352 b. | Hicham, 370. |
| Aburne, 353. | Cuningesbi, 370 b. |
| Willingham, 354 b. | |

MIDDLESEX.

| | |
|------------------------|---------------------|
| *Fulcham, 127 b. | Stanewelle, 130. |
| Draitone, 128. | *Gesteleworde, 130. |
| Stanes, 128. | Hamntone, 130. |
| Seepertone, 128 b. | Herefelle, 130. |
| Hermodesworthe, 128 b. | Toteham, 130 b. |
| Enfelde, 129 b. | |

NORFOLK.

| | |
|--------------------|--------------------|
| *Horningtoft, 120. | Pikenham, 144. |
| Helgetuna, 122. | Mildetuna, 149. |
| Culuuerstuna, 127. | Herlinga, 149. |
| Methelwalde, 136. | Anemere, 151. |
| Wimundham, 137. | Culuuerstuna, 153. |
| *Snetesham, 142. | Acra, 160. |
| Risinge, 142. | Congreham, 161. |
| Nereforda, 144. | Wiltun, 161. |

Covestuna, 162.
 Wetinge, 162.
 Cranewisse, 163.
 *Smethedune, 163.
 *Snetesham, 163.
 *Hunstatuna, 173.
 Snareshella, 178 b.
 Witcingkeseta, 179 b.
 *Hunstantona, 197.
 Cresingeham, 191.
 Stoutonet, 206.
 Stratesete, 206.
 Rungetune, 209.
 Feltuella, 213.
 Middeltuna, 222.

Suanetuna, 226.
 Leccesham, 226.
 Crepelesham, 230.
 *Welle, 231.
 Cressingham, 235.
 Nichetun, 236.
 Middeltun, 238.
 Dudelingtuna, 245.
 Oxenburh, 245.
 Dersincham, 256.
 Pateslea, 256.
 Brom, 259 b.
 Cherebroc, 265.
 Torp, 266.
 Atleburia, 267.

NORTHAMPTONSHIRE.

No fishery is mentioned as such; but there are numerous eel-rents paid as the rents of mills, *e.g.*, Oundle (Undele) on the Nene, "a mill of 20s. and 250 eels." The fisheries are all included in the eel-rents as in Leicestershire.

NOTTINGHAMSHIRE.

Nottingham, 280.
 Duneham, 281.
 Mamesfelde, 281.
 Sudtone, 282.
 Sudwelle, 283.
 Nortwelle, 283.
 Newcherche, 283 b.
 Nord Muscham, 284.
 Marnham, 285 b.
 Gulnetorp, 285 b.

Burtone, 286 b.
 Gringeleia, 286 d.
 Rametone, 287.
 Radeclive, 288.
 Fiscartone, 288 b.
 Stockes, 289.
 Scelford, 289.
 Landeforde, 291.
 Crunwelle, 292.

OXFORDSHIRE.

Besintone, 154 b.
 Hedintone, 154 b.
 Bentone (Rex), 154.
 Bentone (Episcopi), 154 b.
 Dorechestre, 155.
 Eglesham, 155.
 Hardintone, 155 b.
 Dadington, 155 b.
 Stantone, 155 b.
 Sumertone, 155 b.

Cersetone, 156.
 Codesdune, 156 b.
 Sanford, 156 b.
 Givetelei, 157 b.
 Etone, 158.
 Haiforde, 158.
 Neuham, 159.
 Estone, 160.
 Bradewelle, 160.
 Covelle, 160 b.

SHROPSHIRE.

Baschurche, 253
 Forde, 253 b.
 Achelow, 253 b.
 Heme, 254.
 Etune, 254 b.
 Uptune, 254 b.
 Nasse, 255.
 Maneford, 256.

Crugetone, 256.
 Cristesache, 256 b.
 Hantenetune, 256 b.
 Udeford et Ruitone, 257 b.
 Wiche, 257 b.
 Catewinde, 257 b.
 Lenteurde, 260.

SOMERSETSHIRE.

Lanporth (Burgus), 86.
 Crice, 86 b.
 Nort Curi, 86 b.
 Mertok, 87

Wedmore, 89 b.
 Glastonbury, 90.
 Michelnye, 91.

STAFFORDSHIRE.

Wrifeld, 248 b.

SUFFOLK.

Ludinglond, 283.
 Mitdenehall, 288.
 Carletuna, 296 b.
 Helvedone, 303.

Satburna, 317.
 *Holeslea, 317.
 Eiam, 319 b.
 Waltune, 339.

SUFFOLK—*continued*.

| | |
|-------------------------|---------------------|
| Wirilintone, 355. | Helveduna, 398. |
| Dunham, 359. | Hersewella, 402. |
| Burgus S. Edmundi, 372. | Brantona, 403. |
| Frakenham, 381. | Lakingehetha, 403. |
| Brandon, 381. | Todenham, 403. |
| Laringahetha, 382. | Luermara, 408. |
| Lundale, 382. | Turketlestuna, 420. |
| Lakingahetha, 392. | Burtone, 435 b. |
| Alwartuna, 394. | |

SURREY.

| | |
|---------------------|-----------------|
| Kingston, 30. | Waleton, 35. |
| Mortlake, 30 b. | Bocheham, 35 b. |
| Petrichesham, 32 b. | Kingeston, 36. |
| Biffet, 34. | Sande, 36. |
| Limenesfeld, 34. | Wiselei, 36 b. |

SUSSEX.

| | |
|--------------------|----------------------|
| Roseham, 16. | Brideham, 24. |
| Hamfelle, 16 b. | *Poleberge, 24 b. |
| *Bury, 17. | *Gretham, 25 b. |
| Fulcheham, 17 b. | *Warnecamp, 24 b. |
| Berewic, 19 b. | *Nonneminstre, 24 b. |
| Borne, 19 b. | *Stoches, 24 b. |
| *Arundel, 23. | *Wepcham, 25 b. |
| Donechitone, 33 b. | Heriedeham, 25. |
| *Stopham, 23 b. | *Offham, 25. |
| Botechitone, 23 b. | Rochintone, 25 b. |
| Borne, 23 b. | |

WARWICKSHIRE AND WILTSHIRE.

No fishery is mentioned as such ; but there are numerous returns of eel-rents.

WORCESTERSHIRE.

| | |
|----------------------------------|---------------------|
| Chideminstre, 172. | Berlingeham, 174 b. |
| Wiche, 172 b. | Ambreslege, 175 b. |
| Holte in Wick, 172 b. | Broc, 176 b. |
| Tidberton, 173 b. | Caldeslei, 176 b. |
| Grimanle, 173 b. | Hamme, 176 b. |
| Halegan cum Bradewesham, 173 b. | Alretune, 177. |
| Ardolvestune et Cristetone, 174. | Many eel-rents. |

YORKSHIRE.

| | |
|-------------------|------------------------------|
| Hindrelaghe, 311. | Fotingham, 324. |
| Tadcastre, 321 b. | Turgisbi, 325 b. |
| Lachinfeld, 322. | Godenesburg, 325. |
| Coldrid, 322. | Cotingeham et Pileford, 328. |
| Alwintone, 322. | Monchetone, 329. |

N.B.—Besides the above there are innumerable instances of receipts of eel-rents in all the counties (except Staffordshire), *e.g.*, Olnei (Bucks), "molendinum de ce anguillis" (f. 145 b). Berlaw (Bucks), "De piscaria d anguillis." Lavendon (Bucks), "Molendinum de xxxvi. et cel anguillis." Tarente (Dorset), "Ibi ii molendini reddentes xxxx. et mille anguillæ." Hoddesdon (Hertford), "De gurgite xxi anguillæ; de piscaria cl anguillæ." Maidstone (Kent), "Ibi ii piscariæ de celxx anguillis." Brune (Lincoln), "vi piscariæ reddentes mmd anguillas." In Bedfordshire and Northamptonshire all the fisheries on the rivers Ouse and Nene are returned with the rent of the mills in eel-rent. Cersetone (Oxon.), "De molino et piscaria xvs. vjd. et clxxv anguillæ." Codesdune (Oxon.), "Ibi molinum et ii piscariæ de xiiis." Estone (Oxon.), "Ibi molinum cum piscaria reddens xxxx." Brade-welle (Oxon.), "Ibi ij molini cum piscariis et pratis reddunt xxs." Edmundune (Salop), "Ibi molinum cum piscaria reddens xs." Hantentune (Salop), "Ibi molinum de cccc anguillis." Catewinde (Salop), "Ibi pratum et molinum cum ii piscariis reddens vs. et lxiiij stickis anguillarum." The practice of letting the fishery in a manor with the mill clearly appears from the entries in Domesday Book, and it is clear that rent was taken in eels both from mills let with fisheries, and from fisheries by themselves. If *all the entries* of eel-rents were collected it would more than double the number of fisheries referred to above set out, and would show that there existed a fishery in almost every riparian manor.

LIST OF FISHERIES.

It has been thought that the existence of several fisheries in tidal waters is exceptional (*a*). This is a mistake.

The true fact is, as can be shown from the records, that all, or almost all, tidal rivers and estuaries were in ancient times, and, where the right still remains valuable, still are, covered by several fisheries in the hands of the subject. The river Tweed is entirely covered by them; the Tyne also from its mouth upwards; the Aln, the Coquet, the Wansbeck, the Wear, and the Tees are in the same case; many of the manors on the Humber have several fisheries as parcel of them; the tidal waters of the Ouse, Derwent, Ayre, Calder, and Don were covered by several fisheries parcel of the manors on the banks; the case is the same with respect to the Trent, Witham, the Welland, the Nene, the Ouse, the Cam, the Aire, the Waveney, the Stour, the Colne, the Blackwater, the Crouch, the Thames on the coast of Essex, the Swale, the Christchurch Avon, the Frome, the Axe, the Exe, the Teign, the Dart, the Tamar, the Fal, the Severn, the Wye, the Dee, the Mersey, the Ribble, the Lune, the Eden, the Derwent, and the Solway Frith. If reference were made to the grants and records relating to manors situate upon tidal rivers and estuaries there is no doubt that several fisheries would be found to be parcel of all or almost all of them. With regard to fisheries upon the open sea coast, it is clear that they existed from the earliest time. *Magna Charta*, c. 26, which orders all kiddels to be destroyed throughout England, specially excepts those "*per costeram maris*;" and Hale remarks that "this exception of weirs upon the sea-coast, and likewise frequent examples, make it appear that there might be such private interests, not only in point of liberty, but in point of propriety, on the sea-coast and below the low-water mark, for such were regularly all weirs." The records show that these several fisheries existed all round the coast, the lords of the manors having weirs placed upon the foreshore wherever the shore was suitable for that kind of fishery; kiddel fishing was universal throughout the open shore of the county of Essex. The *Quo Warranto* Rolls and the *Hundred Rolls* show numerous instances of such fisheries in the counties of York, Lincoln, Norfolk, Suffolk, Kent, and elsewhere. In fact, there is practically no doubt that the whole foreshore of the kingdom, wherever it was fit for fishing by weirs, was covered by several fisheries. With regard to non-tidal waters, there is no doubt whatever that in ancient times the whole of them were embraced in several fisheries as parcel of the manors which either abutted on or included the rivers.

The following very imperfect list refers to places in which fisheries are shown to have existed from notes of records in the authors' collections. The list might be amplified if the inquisitions and extents

(*a*) See Hall on Sea-shore, p. 716.

of manors, fines and other records were inspected, the calendars of these documents not giving particulars as to fisheries. The authors are fully conscious that this list is very imperfect, but it is given for the purpose of showing the existence of fisheries in numerous places throughout the kingdom.

N.B.—*The fisheries set out in this list are referred to in ancient records, the notes of which are in the authors' collection of materials for this work. The ancient spelling of the names of places has been followed. The fisheries dealt with in this work are referenced by the pages.*

A.

Abbotsbury, Dors.
 Abberbury, Northampton.
 Aberavon, Monm.
 Aberavon, Glam.
 Abermo, Merioneth.
 Abyndon, Berks.
 Acaster Selby (Ouse), Yorks.
 Accrington, Lancs.
 Achelow, Salop, p. 2.
 Acle, Norf., p. 37.
 Acton next Nether Walton, Cheshire.
 Adell (Wharfe), Yorks.
 Adderbury, Oxon.
 Aghton, Lancs.
 Akle, Beds.
 Ake, Yorks.
 Ainsdale, Lanc.
 Ainstable (Ayestapeleth) Cumb., p. 77.
 Aire River, Yorks., pp. 27, 67.
 Alan, Aleyn River, Cornwall, p. 61.
 Alberbury, Oxon., p. 67.
 Alborough, Yorks.
 Aldecote, Berks.
 Aldelyme, Cheshire.
 Aldencrawe, Northumberland.
 Aldenham, Herts.
 Aldwark (Swale), Yorks.
 Alfayscote, Oxon.
 Alington, Hunts.
 Allington, Great, Hants.
 Alvingham, Lincs.
 Alne River, Northumberland.
 Alnmouth, Northumberland.
 Alnwick, Northumberland.
 Alresford, Essex.
 Alresford, Hants.
 Alresford Pond, Hants, p. 87.
 Alsterton, Cheshire.
 Alstanton, Cheshire.
 Althorp, Lincs.
 Alveston, Warwick.
 Alynton, Hunts.
 Amble, Northumberland.
 Ammeley, Elmeley, Worc.
 Auckholm, Lincs.
 Ashperton, Devon.
 Appulton (Thames), Berks.
 Appleton (Wharfe), Yorks.
 Apledore, Kent, p. 4.
 Arden (Rye), Yorks.
 Ardyngton (Wharfe), Yorks.
 Arlingham, Glouc., p. 68.
 Armathwaite, Cumb.
 Armen (Ouse and Eyre), Yorks.

Arnesfourthe, Yorks.
 Arneside, Lancs.
 Arnot, Cumb.
 Arnside Bay, Cumb.
 Arthuret, Cumb.
 Arun River, Sussex, pp. 4, 8, 27, 81, 82.
 Arundell, Sussex, p. 30.
 Aschelond, Warwick.
 Asilmere, Notts.
 Ashby, Suffolk.
 Ashford West, Devon.
 Askeland, Lancs.
 Asshewere, Glouc.
 Ashton, Lancs.
 Astland River, Lanc.
 Artelworth (Severn).
 Asperton, Hereford.
 Aston, Oxon., p. 45.
 Aston, Staffs.
 Aston, Cheshire, p. 3.
 Aston, Warwick.
 Aston, nr. Birmingham, p. 49.
 Aston, Northampton.
 Aston, Derby.
 Attlebrig, Norfolk, p. 40.
 Audestell, Northumberland.
 Aure, Glouc.
 Auste, Glouc.
 Avene, Glouc.
 Avene, Warwick.
 Avington, Berks.
 Avon, Hants, p. 111.
 Avon River, Glam.
 Avon River, Worc., pp. 8, 9.
 Avon River, Warwick, p. 42.
 Axholm, Lincs.
 Axe River, Devon.
 Axminster, Devon.
 Aylington, Hunts.
 Aylnington, Glouc.
 Ayton, York.

B.

Babbeworth, Middlesex.
 Badburham, Cambs.
 Badd, Devon, p. 68.
 Bagenore, Berks.
 Baghall, Yorks.
 Bakestach, Monm.
 Bala Lake, Wales, p. 161.
 Ballingdon, Essex.
 Ballingdon, Suffolk.
 Balnecroft (Went), Yorks.
 Balnehall (Went), Yorks.
 Bampton, Oxon.
 Bampton Doyle, Oxon., p. 44.

- Bankhall, Lancs.
 Banne River, Ulster, p. 27.
 Bardalgarth, Yorks.
 Bardenay, Lincs.
 Barleby (Ouse), Yorks.
 Barley (Ouse), Yorks.
 Barling, Essex.
 Barling, Kent, p. 4.
 Barlowe, Lincs.
 Barmouth, Wales.
 Barnley-on-Don, Yorks.
 Barnestaple, Devon.
 Baronburgh, Yorks.
 Barsham, Suffolk.
 Barrow, Cheshire.
 Barton Magna, Oxon.
 Barton (Test), Hants.
 Barton, Westmorland, p. 83.
 Barwick St. James, Wilts.
 Bastenwater, Cumb.
 Bassenthwaite Lake, p. 87.
 Bathford, Somerset.
 Bathinwere, Glouc.
 Bathkynton, Warwick, p. 42.
 Battersea, Surrey.
 Baubend, Cumb.
 Bawtry, Yorks.
 Bayford, Herts.
 Baye, Lincs.
 Bayn River, Lincs., p. 40.
 Beaconsall, Lancs.
 Beaumont, Lancs.
 Beaumund, Cumb.
 Bebington (Lower), Cheshire.
 Beccles, Suffolk, p. 42.
 Bedik Waterville, Durham.
 Beilingei, Leicester, p. 4.
 Bekerton, Norfolk.
 Belby (Ouse), Yorks.
 Beley, Derby.
 Belles, The (Tweed), Northumberland.
 Benfleet Bay, Essex.
 Benflete, Essex, p. 4.
 Bensyngton, Oxon.
 Benyngholme, Yorks.
 Bennyngton, Lincs., p. 40.
 Benwell, Northumberland.
 Benwyk, Cambs.
 Bereford, Warwick.
 Berghton, Lincs.
 Berghton, Derby.
 Berkeley Herons, Glouc.
 Berkhamsted Parva, Herts.
 Berkington, Bucks.
 Berkington, Northampton.
 Berry Pomeroy, Devon, p. 53.
 Bersholm Loch, Notts.
 Berton, Herts.
 Berton-cum-Rodeley, Bucks.
 Berwick-on-Tweed, Northumberland.
 Beswyk, Yorks.
 Bethum, Westmorland.
 Beverley, Yorks.
 Beweford, Devon.
 Bickleswere, Glouc.
 Bideford, Devon, p. 3.
 Bidenham, Beds.
 Bikedon, Devon.
 Bikeresdik, Notts.
 Bickeresdick, Lincs.
 Bickeresdike, Yorks.
 Bilawe, Norfolk.
 Billingford, Northampton.
 Bilton (Nidd), Yorks.
 Bindon, Dorset.
 Binsey, Oxon.
 Birchmere, Hunts.
 Birkdale, Lanc.
 Birkley, Northampton, p. 41.
 Bisham, Bucks.
 Bishopstoke, Hants.
 Blackwater River, Essex.
 Blackwater River, Cork.
 Bladen, Oxon., p. 8.
 Blaemyre, Le, Cumb.
 Blakough-next-Pyton, Durham.
 Blakepol, Notts.
 Blaketoft (Use), Yorks.
 Blakwell, Durham.
 Blandford, Dorset.
 Bleber, Berks.
 Blecchesho, Beds.
 Blith, Warwick.
 Bodekham, Cambs.
 Boketon, Norfolk.
 Bolton Percy (Ouse), Yorks.
 Bolton East (Tees), Yorks.
 Bolyn, Cheshire.
 Bondon, Norfolk.
 Bontynghull, Sussex.
 Boothelyegarth (Ouse), Yorks.
 Borefleet, Kent.
 Borne, Hants.
 Boroughbridge, Yorks.
 Bosham, Sussex, p. 4.
 Bostock, Cheshire.
 Boston, Lincs.
 Botilbruge, Hunts.
 Bowness, Solway Frith, Cumberland.
 Boyne Water, Ireland.
 Brackley, Oxon.
 Brade (Tweed), Northumberland.
 Bradeley, Cheshire.
 Bradested, Kent.
 Bradefend, Herts.
 Bradewell, Oxon.
 Bradenynch, Devon.
 Bradwall, Cheshire.
 Bradwell, Essex.
 Bradwell, Derby.
 Brafferton (Swale), Yorks.
 Braham, Suffolk.
 Brampton, Northampton, p. 41.
 Bramwith Woodhorn, Yorks.
 Brandesburton (Hull), Yorks.
 Brandesby (Swale), Yorks.
 Brandon, Warwick, p. 42.
 Brassington, Derby.
 Bray, Berks, pp. 20, 77, 118.
 Braythmere, Herts.
 Brecknock, Brecon.
 Brecon, Brecon.
 Bredon, Leicester, p. 39.
 Brentford, Middx.
 Brereton Mere, Cheshire.

Bretford, Sussex.
 Bretford, Warwick, p. 42.
 Brothenham, Norfolk.
 Bretiemorton, Worcester.
 Bretherton, Cheshire.
 Brewardeshalgh, Cheshire.
 Bridgeford East, Notts, p. 61
 Brightlingsea, Essex.
 Briklesworth (Brixworth), North-
 ampton, pp. 41, 46.
 Brightwell, Berks.
 Broadwell, Oxon.
 Brodegay, Norfolk.
 Brodhe, Huntingdon.
 Brokesby, Leicester, p. 39.
 Brokham, West, Norfolk.
 Brokhole, Lanes.
 Brokewere, Glam.
 Bromehill, Kent.
 Bromborough, Cheshire.
 Bromham, Beds.
 Brompton, Yorks.
 Brough, Cumb.
 Broughton-in-Furness, Lanes.
 Brownfleet, York.
 Bruardeshalgh, Cheshire.
 Brythewell, Suffolk.
 Buckingham Castle, Bucks.
 Buckeshale, Lincs.
 Buckland, Berks.
 Buckland, Devon.
 Budd, Devon.
 Buddesdon, Cheshire.
 Budworth, Cheshire.
 Budworth-in-le-Frith, Cheshire.
 Budworth Meer, Cheshire.
 Bukey (Buckby), Northampton.
 Buketh, Northampton, p. 41.
 Bukenham, Norfolk.
 Buckfast, Devon.
 Bulshot, Northumberland.
 Bulthamfenne, Lincs.
 Bunselok, Oxon.
 Burcot, Oxon and Berks.
 Burgh-on-Sands, Cumb., p. 60.
 Burneby, Yorks.
 Burnham, Essex, pp. 68, 79, 90.
 Burnham, Bucks.
 Burton, Great (Yore), Yorks.
 Burton, Berks.
 Burton, Notts.
 Burton, Pidsey, Yorks.
 Burton, Statham, Lincs.
 Burwardescote als Buscott, Berks.
 Bury, Sussex, p. 4.
 Buterwic, Lincs.
 Buttercramp (Derwent), Yorks.
 Buxton Marsh, Norfolk.
 Bylock, Leicester.
 Byker, Northumberland.
 Byland, Old (Rye), Yorks.
 Byllynge, Cambs.
 Bytham, Lincs.
 Bywell, Durham.

C.

Cadland, Hants.
 Caldecote, Bucks, p. 47.

Caldecote, Monm.
 Calder River, Yorks.
 Caldey, Cheshire.
 Caldey Parva, Cheshire.
 Calstock, Cornwall.
 Calton (Eyre), Yorks.
 Camberton, Cumb., p. 173, n.
 Cambhous, Durham.
 Cambridge, Cambs.
 Camel River, Cornwall, p. 61.
 Camer River, Cornwall.
 Cane (Eske), Yorks.
 Canelia, Cheshire, p. 3.
 Canford, Dorset.
 Canewdon, Essex.
 Canterbury, Kent.
 Cardiff, Glam.
 Careby, Lincoln, p. 71.
 Careckford, Lincs., p. 41.
 Carhampton, Somerset.
 Carlburye, Durham.
 Carleton, Beds.
 Carleton, Yorks, p. 27.
 Carleton near Snaith (Aire),
 Yorks, p. 67.
 Carleton, Suffolk, p. 42.
 Carlisle, Cumb.
 Carsington, Oxon.
 Carswell, Berks.
 Cartmell, Lanes.
 Castle Barnard, Durham.
 Castle Donyngton, Leicester,
 p. 30.
 Castleforth Mills, Yorks.
 Castle Goodrich, Hereford, p. 60.
 Castre, Lincs.
 Catelrig, Lincs.
 Caterford, Norfolk.
 Catersete, Norfolk.
 Caton, Lanes.
 Cattall (Little), Yorks.
 Cavendish, Suffolk.
 Caversham, Oxon.
 Cawode (Wharfe), Yorks.
 Cereby, Lincs., p. 29.
 Cersetone, Oxon., p. 2.
 Cestresham, Bucks.
 Cestrehunt, Essex.
 Cestreton, Huntingdon.
 Cestreton, Oxon.
 Chadlington, Beds, p. 44.
 Chalke, Kent.
 Chalke, West, Kent.
 Chalkwell Hall, Essex.
 Charleford, Berks.
 Chapel Brampton, Northampton.
 Charwell, Northampton.
 Charwell, Oxon., p. 4.
 Chatham, Kent, p. 4.
 Chedham, Sussex.
 Chekyston, Devon.
 Chellesworth, Oxon.
 Chelvynton, Beds.
 Chelwell, Derby.
 Chemenye, Oxon., p. 44.
 Chepstow, Glouc., p. 4.
 Chercheyeftele, Oxon.
 Chertsey, Bucks.
 Cherwell, Surrey.

- Cherwell River, Oxon., p. 45.
 Chesilford, Suffolk.
 Chesilhampton, Oxon.
 Chesswyk, Durham.
 Chester, Cheshire.
 Chester-le-Street, Durham.
 Chester, Durham.
 Chesterton, Cambs.
 Chibenhurst, Oxon., pp. 44, 67.
 Chiche St. Osyth, Essex.
 Chilbolton, Hants.
 Chillewell, Notts.
 Chilton, Wilts.
 Cholsey, Berks.
 Chorleton, Lanc.
 Church Shotewick, Cheshire.
 Christchurch, Hants.
 Clacton, Essex, p. 4.
 Clare Hall, Essex.
 Claughton, Lancs.
 Claverdon, Warwick.
 Clementhorpe, Yorks.
 Clewer, Berks.
 Clifton Hampden, Berks.
 Clifton in Amounderness, Lancs.
 Clitherhoe, Lancs.
 Clopcote, Berks.
 Clopham, Beds.
 Cluyt, Cheshire.
 Clymt, Yorks.
 Clyst, Devon.
 Clewer, Berks.
 Cocken, Durham.
 Cokersand, Lancs.
 Cockermonth, Cumb., p. 173.
 Codesdone, Oxon., p. 2.
 Coges, Oxon., p. 45.
 Cokerington, Lincs.
 Coket, Northumberland.
 Cokington, Devon.
 Colchester, Essex.
 Coleway, Notts.
 Colne River, Essex, pp. 28, 81, 89.
 Colne River, Middlesex, p. 30.
 Colstoche, Cornwall.
 Colverechirchestre, Somerset.
 Coly Weston, Northampton.
 Congleton, Cheshire.
 Coneham, Lincs.
 Congeston, Lincs.
 Coniston Lake, Consey, Lancs.
 Conway River, Carnarvon.
 Conyngesholm, Lincs.
 Coniston (Wharfe), Yorks.
 Cookenham, Lancs.
 Cookham, Berks, pp. 29, 49, 77,
 109, 110.
 Copeland, Water of, Northumber-
 land.
 Corbridge, Northumberland, p. 70.
 Corston, Somerset.
 Cork, Ireland.
 Cornall, Durham.
 Cornwall, County.
 Cornworthy, Devon, p. 4.
 Covele, Middlesex.
 Corteshal, Norfolk.
 Cossey, Norfolk.
 Costerey, Norfolk.
 Costa River, Yorks, p. 110.
 Costemeston, Glam.
 Cotebroc, Northampton.
 Coteham, Cambs.
 Cotes, Northampton.
 Cotes, nr. Guilsborough, North-
 ampton, p. 41.
 Cotherston, Yorks.
 Cottenham, Cambs.
 Cowesbye, Yorks.
 Cowley, Oxon.
 Coxwell, Somerset.
 Crackford, Norfolk.
 Craunkebury, Kent.
 Crawcrook-on-Tyne, Northum-
 berland, p. 155, 156.
 Creech, Somerset.
 Creton, Northampton.
 Crewbrook, Cheshire.
 Crivelton, Lancs.
 Crofton Braybof, Wilts.
 Cromarty Firth, Scotland.
 Cromwell, Durham.
 Crosby, Cumb.
 Crosseby, Little, Lancs.
 Crosthwaite, Norfolk.
 Croston, Lancs.
 Crouch River, Essex, pp. 68, 79, 90.
 Crothale, Kent.
 Crowland Fen, Lincs.
 Croyland, Lincs.
 Crulle, Yorks.
 Crunwell, Notts.
 Cuddesdon, Oxon., p. 2.
 Cudworth (Derne), Yorks.
 Cuardale, Lancs.
 Culcheth, Lancs.
 Culham, Oxon.
 Culneham, Berks.
 Culstalk, Lancs.
 Cumbe, Oxon.
 Cummer, Berks.
 Cumquittington, Cumb.
 Cumwhiton, Cumb.
 Cundall (Swale), Yorks.
 Curry, North, Somerset.
 Cury Ryvell, Somerset.
 Custhorpe, Lincs.

D.

- Dale, La, Lancs.
 Dalton in Furness, Lancs.
 Darfeld, Yorks.
 Darleston, Staffs.
 Dart, River, Devon, pp. 29, 30, 33.
 Darton (Derne), Yorks.
 Darwin, Cumb.
 Darwent, Northumberland.
 Darwent, Yorks.
 Darwent Head, Cumb.
 Datchet, Bucks.
 Deal Vally, Kent.
 Dedynsall, Durham.
 Dedham Mill, Essex.
 Dedham, Suffolk.
 Dee, River, Cheshire, p. 62.
 Deeping Fen, Lincs.
 Deeping, East, Lincs.

- Deeping, West, Lincs.
 Denford, Berks.
 Dengie Marsh, Kent and Sussex.
 Denham on Colne, Middlesex,
 p. 30.
 Denham Dendent, Middlesex.
 Denham, Cheshire.
 Dent, Yorks.
 Derby, Derby.
 Derham, Norfolk.
 Dersewyk, Yorks.
 Dertyngton, Devon.
 Derwent River, Cumb.
 Derwent River, Yorks, p. 110.
 Derwent River, Durham.
 Derwent River, Derby.
 Derwent River, Staffs.
 Derwentwater Lake, p. 87.
 Deven, Leicester.
 Dibden, Hants, p. 4.
 Dieping, Northumberland.
 Dighton (Darwent), Yorks.
 Dilston, Northumberland.
 Dilwe, Hereford.
 Doddbrook, Hants.
 Dodeham, Kent, p. 24.
 Doddington, Northampton.
 Dodyngton, Leicester.
 Dodesmannes Mere, Huntingdon.
 Dokenfeld, Cheshire.
 Dokesworth, Cambs.
 Doncaster, Yorks.
 Donyford Water, Somerset.
 Donington (Castle), Leicester,
 pp. 30, 39.
 Dorchester, Oxon., pp. 2, 27,
 67.
 Dore, Water of, Hereford.
 Dorney, Berks.
 Dove, Staffs.
 Doverdale, Lanes.
 Dowliswere, Kent.
 Downe River, Staffs.
 Downe Ampney, Wilts.
 Draycott, Berks.
 Draycott, Notts.
 Dreyton, Oxon.
 Drayton, Bucks.
 Drumburg, Cumb.
 Dublin, Ireland.
 Dudyington, Oxon.
 Dudden, Lanes.
 Duddon, Chester.
 Dumplington Mill, Lanes.
 Duneford, Wilts.
 Duneford, Somerset.
 Dunham, Notts.
 Dunmere River.
 Dunshaugh, Bucks, Northamp-
 ton.
 Dunstanborough, Northumber-
 land.
 Dunston, Norfolk, p. 41.
 Duntun, Norfolk.
 Dunye, Glouc.
 Durham, Durham.
 Duxford, Berks.
 Dyffren, Monm.
 Dynebour Castle.
 E.
 Easedyke (Wharfe), Yorks.
 Eastburgh, Essex.
 Eastchurch, Kent.
 Easthall, Oxon.
 Eastham, Cheshire.
 Eaton Hastings, Bucks.
 Elboth, Monm.
 Eccleshall, Yorks.
 Eccleswell, Hereford.
 Echeles, Cheshire.
 Edelmbrigg, Kent.
 Eden River, Cumb., pp. 60, 61, 77,
 125, 171, 172, *n*.
 Edington, Berks.
 Edmوندune, Salop, p. 2.
 Edston Magna (Don), York.
 Edwynistrie, Northumberland.
 Eggescliffe, Durham.
 Egre, Cumb.
 Elemerssh, Lincs.
 Ellerby (Ouse), Yorks.
 Ellerker, Yorks.
 Elmore, Glouc.
 Elmshall, Yorks.
 Eloughton, Yorks.
 Elsefeld, Oxon.
 Elsewick (Tyne), Northumber-
 land.
 Eltringham, Northumberland.
 Elvaston, Derby.
 Elvington, Yorks.
 Elwyngton (Tees), Yorks.
 Ely, Cambs.
 End (Ind R.), Cumb.
 Emberton, Bucks.
 Emby, Kent.
 Emsworth, Hants.
 Enford, Wilts.
 Englewood Forest, Cumb.
 Ensham, Oxon.
 Epworth, Notts.
 Eppeworth, Lincs.
 Erdington, Oxon.
 Erleigh, Berks.
 Erne River, Devon, p. 68.
 Erne Lough, Ireland, pp. 50, 84.
 Eryth Streame, Cambs.
 Erlesweye, Glouc.
 Erlingham, Glouc.
 Esk River, Yorks.
 Esk River, Cumb., pp. 171, 172, *n*.
 Esk (Solway Frith), Cumb.
 Eshton, Lanc.
 Esseby, Leicester, p. 39.
 Esshe, Durham.
 Eastbarkewerth, Lincs.
 Estbriggefurd, Notts.
 Estmor, Norfolk.
 Estone, Oxon., p. 2.
 Eston in Cleveland (Tees), Yorks,
 p. 60.
 Estone, Suffolk, p. 42.
 Estondeham, Norfolk.
 Estwudeham, Herts.
 Eton, Berks.
 Etterby, Cumb.
 Etterinton, Devon.

Euston, Suffolk.
 Evesham, Worc.
 Everesley, Hants.
 Evreham, Bucks, p. 1.
 Ewdon, Berks.
 Exe River, Devon.
 Exiland, Devon.
 Exmouth, Devon.
 Eyle, Cornwall.
 Eynesbury, Huntingdon.
 Eynesham, Oxon.
 Eyre River, Yorks.
 Eyseworth, Northumberland.
 Eyton, Hereford.

F.

Fal, River, Cornwall, p. 96.
 Fambridge, Essex, p. 4.
 Farcett, Huntingdon.
 Farnbridge, North, Essex.
 Farnbridge, South, Essex.
 Farringdon, Berks.
 Farsheved, Huntingdon.
 Faversham, Kent, p. 112.
 Fawe River, Cornwall.
 Fawley, Berks.
 Felmersham, Beds.
 Felling (Tyne), Durham.
 Fendick, Lincs.
 Fennihouse, Staffs.
 Fernhead (Mersey), Lancs.
 Fifield, Berks.
 Fikesburg, Lincs.
 Filey (Esk), Yorks.
 Finkelton, Lancs.
 Fishegarth, Malton, Yorks.
 Fiskerton, Lincs.
 Fishwick, Lancs.
 Flamborough, Yorks.
 Foderinghay, Northampton.
 Fobbing, Essex.
 Fogehop (Fownhope), Huntingdon, pp. 27, 59, 67.
 Force, Westmorland.
 Fordbotle, Lancs.
 Fordington, Dorset.
 Formby, Lancs.
 Forse, Yorks.
 Foulersshell, Durham.
 Foulness, Essex.
 Fowey, Cornwall.
 Fowkestapleford, Cheshire.
 Fowlestreme, Berwick.
 Fownhope, *see* Fogehop.
 Foyle, Lough, Ireland, p. 51.
 Frampton, Glouc.
 Freconmouth, Norfolk.
 Frekelton, Lancs.
 Frekenham, Suffolk.
 Fremelond, Glouc.
 Frergoose, Durham.
 Freskeneye, Lincs.
 Fritherne, Glouc.
 Friskney, Lincs.
 Froddingham, Yorks.
 Frodsham, Cheshire.
 Frome River, Dorset, pp. 11, 28, 81, 82, 102.

Fryston, Yorks.
 Fulham, Middlesex, p. 4.
 Fulney, Water of, York.
 Furness, Lancs.

G.

Gahurst, Bucks.
 Gardo (Tweed), Durham.
 Garinges, Oxon.
 Garynor, Ireland.
 Gateshead, Durham.
 Gathampton, Oxon., p. 45.
 Gayton, Cheshire, p. 3.
 Gedney, Lincs, p. 4.
 Gelham, Nether, Essex.
 Gelham, Over, Essex.
 Gestlyngg, Kent.
 Ghellinge, Notts.
 Gilgarren, Pembroke.
 Gillesland, Cumb., p. 61.
 Gilling, Huntingdon.
 Ginges-Joybert, Essex, p. 48.
 Gisborough, Yorks.
 Gisburn (Eske), Yorks.
 Glatton, Huntingdon.
 Glaumfordbrig, Lincs.
 Glenye River, Lincs.
 Gloucester (Severn), p. 4.
 Glynneth, Glouc.
 Godestowe, Oxon.
 Godmanchester, Huntingdon.
 Golbinrundand, Cheshire.
 Goldesclive, Monm.
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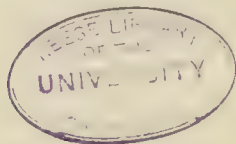
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